

Responses of John J. McConnell, Jr.
Nominee to be United States District Judge for the District of Rhode Island
to the Written Questions of Senator Jeff Sessions

- 1. Have you ever represented anyone in a case against the manufacturers of lead-based paint or dealing with lead poisoning, prior to the Rhode Island case? If so, please list each matter and include a description.**

Response: Yes, I represented Renita Jackson and others in an action against former manufacturers of lead pigment for use in paint in Cuyahoga County Common Pleas Court in Ohio. That case was filed on August 11, 1992, and I became involved in 1996. In addition, in the years prior to filing the State of Rhode Island, I represented numerous children and their parents against landlords alleging negligence due to lead-poisoning. These cases on behalf of individual lead poisoned children go back over 15 years and my firm's records do not allow me to identify them with any further particularity.

- 2. Please describe your reasons for designating Brigham and Women's Hospital as the destination for settlement money from DuPont related to the Rhode Island lead paint litigation.**

Response: My firm waived its attorney fees that would be due from the State's settlement with DuPont, on the condition that those fees be directed to a charitable cause. We chose Brigham and Women's Hospital because its doctors were conducting experimental work on treatments for people with mesothelioma, an asbestos-related cancer. This is a cause that my partners and I care deeply about in light of our years of work in the area.

- a. Do you believe it was appropriate to designate lead paint litigation settlement monies to an out of state hospital when such monies should have benefitted the citizens of the State of Rhode Island?**

Response: The money designated to Brigham & Women's Hospital represented attorneys fees that would otherwise have been payable to Motley Rice LLC. I believe it was appropriate for my partners and me to select the recipient of a charitable donation for funds that would otherwise have come to us as attorney fees.

- b. Do you believe it was appropriate to designate lead paint litigation settlement monies to a cause associated with asbestos-related disease, when such monies presumably should have been designated a cause associated with lead poisoning?**

Response: The money designated to Brigham & Women's Hospital represented attorneys fees that would otherwise have been payable to Motley Rice LLC. I believe it was appropriate for my partners and me to select the recipient of a

charitable donation for funds that would otherwise have come to us as attorney fees.

- c. **Prior to designating the DuPont settlement money, did you or your law firm have any preexisting pledge or commitment to donate money to the Brigham and Women's Hospital in Boston? If so, provide the details of that pledge or commitment, including when that pledge or commitment was made; who from your law firm made that pledge or commitment; the amount of the pledge or commitment; and the identity of all representatives or agents at the Brigham and Women's Hospital involved in the pledge or commitment.**

Response: My firm, through my partner Joseph F. Rice, made a commitment on August 15, 2004, to Brigham & Women's Hospital to give or raise \$3 million to help it with its medical research on treatment for mesothelioma. The pledge was made with the lead researcher, Dr. David Sugarbaker.

- d. **Was the DuPont settlement money that was designated to the Brigham and Women's Hospital credited to your and/or your law firm's pledge or commitment to the hospital?**

Response: I would assume so, but I do not know for sure.

- e. **Have you or your firm ever retained Dr. David J. Sugarbaker of the Brigham and Women's Hospital as an expert in a case for which you or your firm was counsel? If so, please identify the case(s) and provide a description for each, including whether Dr. Sugarbaker testified in the matter?**

Response: I have not engaged Dr. Sugarbaker in any case. I have made a diligent inquiry of my firm and do not believe that the firm has retained Dr. Sugarbaker.

- f. **Has Dr. David J. Sugarbaker of the Brigham and Women's Hospital ever referred any plaintiffs or potential plaintiffs to you, your firm, or any attorney at your firm? If so, please identify the case(s) and provide a description for each, including whether they were ultimately used as plaintiffs in any of your cases.**

Response: Dr. Sugarbaker has not referred any plaintiffs or potential plaintiffs to me. I have made a diligent inquiry of my firm and do not believe that Dr. Sugarbaker has referred any plaintiffs or potential plaintiffs to the firm.

- g. **Has any employee, representative or agent of the Brigham and Women's Hospital ever referred any plaintiffs or potential plaintiffs to you, your firm, or any attorney at your firm? If so, please identify the cases for which he referred plaintiffs, the number of plaintiffs he referred, and whether they were ultimately used as plaintiffs in any of your cases.**

Response: No employee, representative or agent of the Brigham and Women's Hospital has ever referred any plaintiffs or potential plaintiffs to me. I have made a diligent inquiry of my firm and its attorneys and do not believe that any employee, representative or agent of the Brigham and Women's Hospital has referred any plaintiffs or potential plaintiffs to the firm or to its attorneys.

- h. Do you or any other attorney at your firm presently have, or expect to have in the future, any case or cases dealing with asbestos and/or the disease mesothelioma?**

Response: I do not. Attorneys at my firm do.

- 3. At your hearing, I asked you about the editorial you and several of your law partners published in the *Providence Journal* criticizing the Rhode Island Supreme Court's decision in the lead-based paint case. You testified that you meant no disrespect to the Court, that "critiquing the law" in newspaper opinion pieces was normal in Rhode Island, and that your criticism was based on the fact that the Rhode Island Supreme Court "changed the law" of public nuisance in Rhode Island. However, the main thrust of the article, as written, was that the Court's decision "let wrongdoers off the hook without any responsibility for the consequences of their actions," "the state was very close to solving the problem of childhood lead poisoning when the court brought the public-health remedy to a screeching halt," that "the money that these corporations spent on defense lawyers and public-relations firms to influence the outcome of this case [was] simply obscene," and that "lead poisoning is prevalent throughout Rhode Island, but it disproportionately affects the least powerful among us—inner city children, children of color—people without any voice in the system."¹ In short, your primary complaint was not that the law was misapplied; the primary complaint was that "[j]ustice was not served."²**

- a. Do you think a judge's job is to interpret the law and correctly apply it to specific facts, or do you think it is to assure that "justice was served"?**

Response: I believe that a judge's job is to interpret the law and correctly apply it to specific facts.

- b. Why did you criticize the Rhode Island Supreme Court because "justice was not served," when its opinion has proven persuasive as a matter of public nuisance law in a number of other jurisdictions?**

Response: The client, the State of Rhode Island, believed that the Rhode Island Supreme Court misinterpreted existing case law and did not properly apply the law to the facts of the case as found by the trial justice and jury below.

¹ Fidelma Fitzpatrick, Bob McConnell & Jack McConnell, *The Rhode Island Supreme Court got it Terribly Wrong In Its Decision In the Recent Lead-Paint Case*, PROVIDENCE JOURNAL, Aug. 19, 2008.

² *Id.*

4. In its opinion reversing the trial court’s judgment in the lead paint case, the Rhode Island Supreme Court detailed the history of public nuisance law—both its common law roots and its development in Rhode Island—before stating the three elements of a public nuisance cause of action.³ Those three elements are: “(1) an unreasonable interference; (2) with a right common to the general public; (3) by a person or people with control over the instrumentality alleged to have created the nuisance when the damage occurred.”⁴

Analyzing your case under these elements, the Rhode Island Supreme Court ultimately concluded that the State of Rhode Island could not demonstrate any set of facts that would satisfy these three elements. Therefore, the Court held that the trial court had erred when it denied the defendants’ Rule 12(b)(6) motion to dismiss. In so holding, the Court noted that “[e]xpanding the definition of public right based on the allegations in the complaint would be antithetical to the common law and would lead to a widespread expansion of public nuisance law that never was intended,”⁵ that “[t]he law of public nuisance never before has been applied to products, however harmful,” and that “[t]he enormous leap that the state urge[d] [the Court] to take [was] wholly inconsistent with the widely recognized principle that the evolution of the common law should occur gradually, predictably, and incrementally.”⁶

- a. Can you cite any precedent of the Rhode Island Supreme Court holding that a defendant can be held liable for a public nuisance based on a product they manufactured many years before the time the alleged public nuisance arose but did not have control over at the time any injury occurred?

Response: Rhode Island has long recognized that claims for public nuisance can be brought against any entity that creates a condition that unreasonably interferes with the health, safety and comfort of the public. *See, e.g., Citizens for Preservation of Waterman Lake v. Davis*, 420 A.2d 53, 59 (R.I. 1980). In addition, the Rhode Island Legislature has found that lead poisoning in Rhode Island meets this definition of public nuisance, concluding that “Childhood lead poisoning is dangerous to the public health, safety, and general welfare of the people and necessitates excessive and disproportionate expenditure of public funds for health care and special education, causing a drain upon public revenue.” R.I.G.L. § 23-24.6-2(5).

Rhode Island had long recognized that public nuisance liability could be established when a threat of harm is created, not when actual harm is caused to the public. *Mugler v. Kansas*, 123 U.S. 623, 673 (1887); *Wood v. Picillo*, 443 A.2d 1244 (R.I. 1982).

³ *State v. Lead Indus. Ass’n, Inc.*, 951 A.2d 428, 443-447 (2008).

⁴ *Id.* at 446-47.

⁵ *Id.* at 453.

⁶ *Id.* at 545.

- b. **What precedents, if any, of the Rhode Island Supreme Court do you argue were overturned by the Court's opinion?**

Response: *Wood v. Picillo*, 443 A.2d 1244 (R.I. 1980); *Citizens for Preservation of Waterman Lake v. Davis*, 420 A.2d 53, 59 (R.I. 1980); *Pine v. Kallian*, 1998 WL 34090599 (R.I. Super. 1998), *aff'd*, *Pine v. Kallian*, 723 A.2d 804 (R.I. 1998); *Hydro-Manufacturing Inc. v. Kayser-Roth Corp.*, 640 A.2d 950, 959 (R.I. 1994).

- c. **The Rhode Island Supreme Court stated that its definition of public nuisance was "largely consistent with that of many other jurisdictions, the Restatement (Second) of Torts, and several scholarly commentators."⁷**

- i. **Do you contend that the Court's statement was inaccurate?**

Response: The Rhode Island Supreme Court accurately cited provisions from the Restatement (Second) of Torts. However, it was the State's position that the Court overlooked significant sections of the Restatement (Second) of Torts that compel a different result, namely Restatement (Second) of Torts § 821, cmt. g; Restatement (Second) of Torts § 821B, cmt. b; Restatement (Second) of Torts § 821B(2)(a) and (c); and Restatement (Second) of Torts § 834, cmt. e.

- ii. **Do you contend that the public nuisance law was substantially different than that of other jurisdictions? If so, please cite case law and scholarly treatises that support your contention.**

Response: Before the Rhode Island Supreme Court's decision in the lead paint case, Rhode Island's public nuisance law was substantially the same as public nuisance law in numerous jurisdictions. The State asserted that the Rhode Island Supreme Court's 2008 decision signaled a shift in Rhode Island's interpretation of public nuisance law, and that precedent differs from public nuisance law in many jurisdictions today. *See, e.g., Conn. v. Am. Elec. Power Co.*, 582 F.3d 309, 357 (2d Cir. 2009); *County of Santa Clara v. Atlantic Richfield Co.*, 137 Cal. App. 4th 292, 306 (Cal. Ct. App. 2006).

- iii. **New Jersey, Connecticut and New Hampshire courts have rendered opinions construing public nuisance in a manner similar to the Rhode Island Supreme Court's opinion in the lead-based paint case. Is it your position that those opinions also misapplied the traditional law of public nuisance?**

Response: I have not analyzed the New Jersey, Connecticut and New Hampshire opinions and so have no positions on them.

⁷ *Id.* at 446.

5. **During the course of the Rhode Island lead paint litigation, the Rhode Island Superior Court fined Attorney General Patrick Lynch several times for contempt of court after he made inflammatory statements to the media. You publicly criticized that, saying “we see hypocrisy in [the defendants] filing motions against the attorney general for saying something publicly while they have two full-time public relations people in court every day trying to affect the press.”⁸**

- a. **If confirmed, would you consider “hypocrisy” a valid consideration in ruling on a motion for sanctions related to inflammatory statements in the media?**

Response: No.

- b. **I am not familiar with the statements that may have been made by the public relations people you mentioned in your statement to the press, but do you think there is a difference between a public relations person trying to make a defendant look good in the press and a statement by a public official about a given case that is likely to inflame the passions of a jury or the public?**

Response: I do not believe anyone should make statements that are likely to inflame the passions of a jury.

6. **During the hearing, Senator Whitehouse said that he suggested the public nuisance theory as an approach to the lead paint litigation. A number of news articles have reported that your law partner, Fidelma Fitzpatrick, developed that approach.⁹ You yourself were involved in the multistate tobacco litigation, which had centered on public nuisance law. Please clarify exactly how the public nuisance theory was developed in the lead-paint litigation.**

Response: Rhode Island Attorney General Jeff Pine asked my firm to analyze possible causes of action that might arise given the facts that had been presented. As part of that presentation, the potential cause of action of public nuisance, amongst others, was included in the analysis. This research and analysis was primarily done by my law partner, Fidelma Fitzpatrick. Then Attorney General Whitehouse spearheaded the drafting of the complaint and arguing the motions to dismiss as it related to advancing the theory of public nuisance.

7. **You were involved in a number of cases brought in the late 1990s by state attorneys general against tobacco companies. As a result, you seem to have developed some very strong feelings about tobacco companies and smoking. For example, you once commented to the press about a proposed smoking ban for Rhode Island**

⁸ Peter B. Lord, *Lynch Fined \$5,000 for Contempt of Court*, PROVIDENCE JOURNAL, May 6, 2006, at A-01.

⁹ See, e.g., Brian C. Jones, *How the Lead Paint Case Was Won*, BOSTON PHOENIX, Feb. 28, 2007, <http://thephoenix.com/Boston/news/34782-how-the-lead-paint-case-was-won/>; John O'Brien, *After unsure beginning, public nuisance provided Motley Rice with staying power in Rhode Island*, LEGALNEWSLINE.COM, Dec. 19, 2007, <http://www.legalnewsline.com/news/205426-after-unsure-beginning-public-nuisance-provided-motley-rice-with-staying-power-in-rhode-island>.

restaurants that “the idea of choice in regard to allowing smoking in restaurants is phony and offensive.” You said “‘freedom of choice, my foot! Not when it’s hurting the public health and it’s addicting another generation of kids.’ Sometimes, [you said], there is no room for choice. [You said] some people might like having all-white restaurants so they don’t have to sit with blacks, but we don’t allow it.”¹⁰

a. Do you still stand by your comparison?

Response: I felt strongly about the smoking ban issue, but I regret making that comparison.

b. At one point, you were also quoted in a newspaper article as saying that you would “like Congress to put the cigarette makers out of business, but that it won’t happen in our lifetime because addicted smokers are such a large voting bloc that [politicians] don’t want to step on them.”¹¹ Given your view that cigarette makers should be put out of business, how can you assure this Committee that you will be fair to a cigarette maker or a tobacco company that might come before your court?

Response: My personal opinion about a public health question would have absolutely no role in my application of the law to the facts.

8. You once said in a press interview that “I am an emotional person about injustice at any level—personal, societal, global.”¹² In that same interview, you said that “[t]here are wrongs that need to be righted, and that’s how I see the law.”¹³ As a lawyer, you were free to see the law that way, and you were free to be emotional about what you perceived as injustice; however, as a judge, you will not have either luxury. You will be required to be objective about situations you might perceive as unjust, and your role will not be to “right wrongs.” Your job, as Chief Justice Roberts put it, will be to be a neutral umpire and call the balls and strikes as you see them.

a. Do you still hold those beliefs?

Response: My role as an attorney was to zealously represent my clients within the bounds of the law, professionalism, and ethics. As a judge, I believe that my role would be to be objective and impartial about all situations and apply existing law to the facts before me, not attempting to achieve any particular result.

¹⁰ M. Charles Bakst, *An Opportunity to Save Lives If We Care*, PROVIDENCE JOURNAL, Apr. 12, 2001, at B-01.

¹¹ M. Charles Bakst, *Jack McConnell: Host to First Lady is Lawyer, Operative*, PROVIDENCE JOURNAL-BULLETIN, Dec. 2, 1999, at B-01.

¹² M. Charles Bakst, *Jack McConnell: Taking on the Bad Guys*, PROVIDENCE JOURNAL, Mar. 7, 2005, at B-01.

¹³ *Id.*

- b. Do you think the views you expressed in that article are appropriate for a judge?**

Response: No.

- c. What can you point to in your record to assure this Committee that you will set those beliefs aside?**

Response: I have practiced law professionally and ethically for over 25 years. I have never had an ethical complaint filed against me and I have never had sanctions filed against me or imposed on me. Every judge before whom I have appeared would attest to my integrity and professionalism. I would conduct myself in a similar fashion in the new and different role as a judge if I am fortunate enough to be confirmed by the Senate.

To point to a specific aspect of my record, I was routinely selected by both sides of a dispute as a neutral arbiter in matters in our state court, which reflects my ability to be a fair and impartial judge.

- 9. In 2003, you were quoted in the *Providence Journal-Bulletin* as saying that “Democrats should stand for active government” and that being a Democrat has “meant fighting for economic and social justice and opportunity for all.” Please explain what you meant by “active government.”**

Response: I meant that our political branches of government should actively commit to ensure justice and opportunity for all people.

- 10. As a volunteer lawyer for the ACLU, you brought suit against a detention facility that housed immigrants who were subject to orders of removal. The facts of that case were quite disturbing, and I understand that Immigration and Customs Enforcement did an investigation and found wrong-doing had occurred. During the course of the litigation, you moved the district court to order prison officials to provide you with records to aid in your investigation, but ICE initially failed to approve the release of those records due to federal regulations.¹⁴ While that dispute was ongoing, you commented to the media that you were concerned detainees could be moved and deported who “could be highly relevant witnesses to what appears to be the torture of an innocent man, and I, for the life of me, can’t figure out why [the facility] and the federal government are keeping this information from the family.”¹⁵**

- a. I understand that the context for your statement was slightly different, but do you understand the need for the federal government to keep certain information from disclosure, including information that pertains to**

¹⁴ See Hillary Russ, *Attorney Seeks Records in RI detainee death*, ASSOCIATED PRESS, Dec. 10, 2008.

¹⁵ Karen Lee Ziner, *Hearing on Detainee Who Dies Is Continued*, PROVIDENCE JOURNAL-BULLETIN, Dec. 11, 2008, at 1.

immigration cases, to assure the government's ability to investigate and prosecute crimes?

Response: Yes.

- b. In view of the Supreme Court's ruling in *Boumediene v. Bush*, which held that terrorists held at Guantanamo Bay are entitled to *habeas corpus*, and with the current administration's insistence on trying foreign-combatant terrorists in civilian courts, would you agree that there is sometimes the need for judges to exercise the utmost care when dealing with sensitive information?

Response: Yes.

11. On May 24, 2006, the Rhode Island affiliate of the American Civil Liberties Union filed an administrative complaint with the Rhode Island Division of Public Utilities and Carriers asking for an investigation of Verizon & AT&T's cooperation with the National Security Agency in anti-terrorism surveillance programs.

- a. According to an administrative order entered by the Department of Public Utilities and Carriers on December 8, 2006, you were appointed as Counsel to the ACLU in this case. Did you, in fact, represent the ACLU in this matter?

Response: I entered an appearance as counsel.

- i. If so, were you retained by the organization, or did you handle the case on a *pro bono* basis?

Response: I handled this matter without charging a fee.

- ii. Did you have any involvement in this matter, in any capacity, prior to being appointed counsel to the ACLU?

Response: No.

- b. On January 19, 2006, the Attorney General of the United States issued a memorandum detailing the administration's position that these activities were legally authorized by Congress' Authorization for Use of Military Force. I understand that many people do not agree with that memorandum; however, did you consider the contents of this memorandum prior to agreeing to represent the Rhode Island ACLU in their complaint against the telecommunications firms for cooperating with the federal government in a program the President and Attorney General of the United States believed was legally proper?

Response: No.

- c. **In 2008, the Congress passed the FISA Amendments Act of 2008, which, among other things, prohibited actions against electronic communication service providers for cooperating with federal authorities in national security surveillance activities that the President and Attorney General of the United States believe are legal. That measure passed the Senate by a vote of 68-29, and the House of Representatives with a vote of 293 to 129. Thereafter, the ACLU filed a lawsuit in the Southern District of New York challenging the constitutionality of the law.**

- i. **Were you supportive of this lawsuit?**

Response: I did not know about the law suit and had no involvement in it. I do not have sufficient information to have a view of the law suit.

- ii. **Do you believe that the authority of the Federal government under the Foreign Intelligence Surveillance Act, as amended by the FISA Amendments Act of 2008, violates the Fourth Amendment to the Constitution? Please explain your answer.**

Response: I have no opinion about this matter, having never dealt with it before, researched it, or considered it.

12. **Please provide a list of any matters in which you have provided any legal services to the American Civil Liberties Union (or any affiliate thereof), in which the United States, an agent, agency or department of the federal government, a State, or an agent, agency or department of a state government was a defendant or intervenor in the case. For each case, please indicate whether you were retained or handled the matter on a volunteer basis.**

Response: I have never provided legal services to the ACLU or any affiliate thereof. In the *Ng v. Central Falls Detention Facility* case, I am listed as a cooperating attorney of the Rhode Island affiliate of the ACLU. In that capacity, however, I do not provide legal services to the ACLU or its affiliate.

13. **According to the organization's website, Amnesty International's position on the death penalty is as follows:**

"The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state. This cruel, inhuman and degrading punishment is done in the name of justice. It violates the right to life as proclaimed in the Universal Declaration of Human Rights. Amnesty International opposes the death penalty in all cases without

exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner.¹⁶

Do you agree with that statement?

Response: No.

- 14. You reported in your questionnaire that you have been a member of the American Constitution Society since 2008. In its mission statement, the ACS includes the following: “ACS believes that law can and should be a force for improving the lives of all people. We are revitalizing and transforming legal and policy debates in classrooms, courtrooms, legislatures and the media.”¹⁷**

- a. Do you share the view that the law should be a force for improving the lives of all people?**

Response: I believe that when the law is fairly and impartially applied, it improves our country and the lives of the people in it.

- b. The ACS has also recently published a book, entitled *Keeping Faith with the Constitution*, co-authored by ACS leaders Pamela Karlan, Christopher Schroeder, and Goodwin Liu, that discusses how that institution sees the proper role of a judge in interpreting the U.S. Constitution. In the very first line of that book, the authors say that “Justice Oliver Wendell Holmes was right when he said that the words of the Constitution ‘have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters.’”¹⁸ The book goes on to say that**

“interpreting the Constitution . . . requires adaptation of its broad principles to the conditions and challenges faced by successive generations. The question . . . is not how the Constitution would have been applied at the founding, but rather how it should be applied today . . . in light of changing needs, conditions, and understandings of our society.”¹⁹

- i. Do you agree with these statements?**

Response: No.

¹⁶ Abolish the death penalty – Amnesty International, <http://www.amnesty.org/en/death-penalty> (last visited May 20, 2010).

¹⁷ American Constitution Society, <http://www.acslaw.org/> (last visited May 20, 2010) .

¹⁸ GOODWIN LIU, PAMELA S. KARLAN & CHRISTOPHER H. SCHROEDER, *KEEPING FAITH WITH THE CONSTITUTION* 1 (2009).

¹⁹ *Id.* at 2.

- ii. The book is also very critical of originalism and strict construction as interpretive approaches, saying that “neither originalism nor strict construction has proven to be a persuasive or durable methodology, not least because they cannot explain many of the basic constitutional understandings we now take for granted.”²⁰ Do you agree with that statement?

Response: No.

- c. In a paper entitled “The Right and Wrong Kinds of Judicial Activism,” recently published by the ACS, Professor Alan B. Morrison argues that

“it is most appropriate for the Court to intervene and overturn legislative decisions when there is some reason to believe that our system of representative government has not worked and that the protections that the Constitution is supposed to afford are lacking. The most common circumstance of appropriate intervention is to safeguard rights of a racial or other minority that were not adequately represented in the political process. There is another important area to which this theory is also applicable: where the structural protections afforded by the Constitution’s specific guarantees of separation of powers or federalism have broken down because of an imbalance in legislative powers.”²¹

Do you agree with that statement?

Response: No.

15. When you were chair of the Myrth York Gubernatorial campaign, columnist Charles Bakst of the *Providence Journal* said that he found you “prone to overnight or early morning emails or phone messages goading [him] to write something critical of York’s opponents, or needling [him] for a column he didn’t like. During [York’s] Primary with Attorney General Sheldon Whitehouse, [he] punched [his] voice mail one day to hear McConnell saying, ‘Oh, I’m sorry, I thought this was the Whitehouse campaign,’ then abruptly hanging up.”²²

- a. Was that statement accurate?

Response: In the middle of a political campaign against Sheldon Whitehouse, I called a columnist with whom I had a long-standing informal relationship to

²⁰ *Id.* at 5.

²¹ Alan B. Morrison, *The Right and Wrong Kinds of Judicial Activism*, AMERICAN CONSTITUTION SOCIETY ISSUE BRIEF, May 2010, available at <http://www.acslaw.org/files/ACS%20Issue%20Brief%20-%20Morrison%20Judicial%20Activism.pdf>.

²² *Id.*

complain in jest about a position he took by leaving a message in which I said ““Oh, I’m sorry, I thought this was the Whitehouse campaign.”

- b. If yes, do you feel that sort of behavior would be appropriate for a public official?**

Response: I do not believe it would be appropriate for a judge. At the time of that comment I was not a public official, but rather a political volunteer in the middle of a heated campaign. Given my long-standing and informal relationship with the columnist, it was meant only as a joke.

- c. Do you think that this and other comments you have made in the political arena might have an effect on how some parties would perceive your fairness and objectivity on the bench?**

Response: I believe that most people who know me, and certainly those that have observed me in a professional setting would realize that I understand the difference between being an advocate in the legal or political system and being in a new role as an impartial and fair judge if I am confirmed by the Senate.

- 16. You have made some very unkind comments about Republicans in public, comments that give me concern about your ability to be objective and fair to different viewpoints. For example, when Republican Governor Lincoln Almond kept the Rhode Island government open during a snowstorm in 1996, you commented to the press that the decision was “typical of the cold-hearted Republican attitude of disregarding workers’ needs.”²³ You went on to argue against the governor’s appeal to the cost efficiency of keeping agencies open by saying that “[w]e could bring child labor back, which would be cheaper, too.”²⁴**

- a. Did you truly believe that Republicans have a typical “cold-hearted attitude of disregarding workers’ needs”?**

Response: No. I regret having made that comment and do not believe it to be true.

- b. Do you truly believe that keeping government offices open during a snowstorm in New England, even a particularly bad storm, is equivalent to the use of child labor?**

Response: No.

²³ M. Charles Bakst, *Almond in Storm: What You Saw Is The Way Gov. Is*, PROVIDENCE JOURNAL-BULLETIN, Jan. 11, 1996, at B-01.

²⁴ *Id.*

- c. **Given your view of the character of Republicans, do you believe you could be fair to a Republican or conservative person or group that came before you if confirmed?**

Response: Yes, I believe that, if confirmed as a judge by the Senate, I would be fair to all who came before me, regardless of any person's party affiliation or their political leanings.

17. The *Providence Journal* recently reported the following:

“[Senator] Reed said McConnell could add balance to the large number of corporate lawyers on the federal bench. ‘We need more guys there who care about the little guy,’ Reed said, referring to McConnell’s representation of people with illnesses caused by asbestos, tobacco and other products.”

- a. **Do you agree with Senator Reed that you “could add balance to the large number of corporate lawyers on the federal bench”? If so, how?**

Response: I am not sure of the context of Senator Reed’s quote. I assume that Senator Reed made the decision to recommend me for the district court position based on his knowledge of our State and on his experience in nominating judges to the bench. I defer to his expertise in this area.

- b. **Do you agree with Senator Reed that “[w]e need more [judges] who care about the little guy”?**

Response: I believe that Rhode Island, indeed every state in the nation, needs judges who care about all litigants, no matter who they are or from where they come.

18. Please describe with particularity the process by which these questions were answered.

Response: I received these questions Thursday evening May 20, 2010 through the Department of Justice (DOJ). I reviewed the questions and I prepared my responses to them. I later discussed my responses with the DOJ. I then finalized my responses. On May 24, 2010 I asked the DOJ to forward my responses to the Senate Judiciary Committee on my behalf.

19. Do these answers reflect your true and personal views?

Response: Yes.

Responses of John J. McConnell, Jr.
Nominee to be United States District Judge for the District of Rhode Island
to the Written Questions of Senator Grassley

1. During the 2008 presidential campaign, President Obama described the kind of judge that he would nominate to the federal bench as follows: “We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”

- a. Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit the President’s criteria for federal judges, as described in this quote?

Response: I assume that I met President Obama’s criteria for a federal judgeship because he nominated me to fill a vacancy on the District Court for the District of Rhode Island after a thorough review of my background and record.

- b. During her confirmation hearing, Justice Sotomayor rejected this so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?

Response: Yes.

- c. Do you believe that it is ever appropriate for judges to indulge their own subjective sense of empathy in determining what the Constitution and the laws mean? If so, under what circumstances?

Response: No.

- d. Do you believe that it is ever appropriate for judges to indulge their empathy for particular groups or certain people? For example, do you believe that it is appropriate for judges to favor those who are poor? Do you believe that it is appropriate for judges to disfavor corporations?

Response: No, for every case and for every litigant, empathy should play no role in a judge’s decisions. It is never appropriate for a judge to favor or disfavor any litigant, including corporations.

- e. After Justice Stevens announced his retirement, President Obama stated that he would select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe that judges should base their decisions on a desired outcome?

Response: No.

2. What, in your view, is the role of a judge? Please describe your judicial philosophy.

Response: The role of a judge is to apply existing law, as set forth in precedents from the U.S. Supreme Court and the U.S. Court of Appeals for the First Circuit, to the facts presented. My judicial philosophy would be to fulfill that role in an impartial, unbiased, and procedurally fair and efficient manner.

3. How do you define “judicial activism”?

Response: Judicial activism, as I would use the term, occurs when a judge decides a case to achieve a desired result or a result consistent with a judge’s own personal policy point of view, rather than based on the law and applicable precedents. It would include a failure to give proper deference, where appropriate, to the elected branches of government.

4. Could you identify three recent Supreme Court cases that you believe are examples of “judicial activism”? Please explain why you believe these cases are examples of “judicial activism”.

Response: I do not think about U.S. Supreme Court cases as examples of judicial activism. If I am confirmed as a judge on the trial court, my role will be to follow the law as set forth by the U.S. Supreme Court and the Court of Appeals for the First Circuit. In that role, therefore, I would be bound to follow any opinion by the Supreme Court that has not been overturned or modified, regardless of my personal opinion about whether that Supreme Court case represented an exercise of judicial activism or judicial restraint.

5. How do you define “judicial restraint”?

Response: Judicial restraint, as I would use the term, occurs when a judge properly applies the law to the facts, setting aside all policy and other considerations that are not appropriate to the courts.

6. Could you identify three recent Supreme Court cases that you believe are examples of “judicial restraint”? Please explain why you believe these cases are examples of “judicial restraint”.

Response: I do not think about U.S. Supreme Court cases as examples of judicial restraint. If I am confirmed as a judge on the trial court, my role will be to follow the law as set forth by the U.S. Supreme Court and the Court of Appeals for the First Circuit. In that role, therefore, I would be bound to follow any opinion by the Supreme Court that has not been overturned or modified, regardless of my personal opinion about whether that Supreme Court case represented an exercise of judicial activism or judicial restraint.

- 7. Do you believe that it is ever appropriate for judges to indulge their own values and/or policy preferences in determining what the Constitution and the laws mean? If so, under what circumstances?**

Response: No.

- 8. Should the courts, rather than the elected branches of government, ever take the lead in creating a more “just” society?**

Response: By correctly and impartially applying the law to the facts in each case that comes before them, the courts make an institutional contribution to the justness of society. This institutional role is important, but courts, as the unelected branch of government, should not take the lead in creating a more just society.

- 9. In your opinion, what is the proper role of foreign law in U.S. court decisions, and is citation to or reliance on foreign law ever appropriate when interpreting the U.S. Constitution and statutes?**

Response: I cannot think of any instance where the use of foreign law would be proper when interpreting the U.S. Constitution and statutes. I do not believe that foreign law should ever be relied upon in interpreting the U.S. Constitution or statutes.

- 10. Does the silence of the U.S. Constitution on a legal issue allow a federal court to use foreign law as an authority for judicial decision-making? When is it not appropriate to look to foreign law for legal guidance or legal authority?**

Response: No. I cannot think of any instance where the use of foreign law would be proper when interpreting the U.S. Constitution and statutes. I do not believe that foreign law should ever be relied upon in interpreting the U.S. Constitution or statutes.

- 11. I would like to get a better understanding of how you would interpret statutes and what your judicial method would be if you were confirmed to be a judge on the District Court of Rhode Island.**

- a. In cases involving a close question of law, what would you look to when determining which way to rule?**

Response: I would look to the language of the statute and then the interpretations of the statutes by the U.S. Supreme Court and the U.S. Court of Appeals for the First Circuit.

- b. Would you agree that the meaning of a statute is to be ascertained according to the understanding of the law when it was enacted?**

Response: I will interpret the meaning of the statute based on the plain meaning of the statute as enacted.

- c. How would you use legislative history when interpreting a statute? What kind of weight would you give legislative history, if any, when interpreting a statute?**

Response: I believe that reliance on legislative history is a last resort when interpreting a statute. Only if the language of the statute is not clear, or if there is no other guidance from higher courts about its interpretation, should a court consider legislative history when interpreting a statute.

Responses of John J. McConnell, Jr.
Nominee to be United States District Judge for the District of Rhode Island
to the Written Questions of Senator Jon Kyl

- 1. Identify all cases where you and/or your current or previous law firms have represented a State or local government (including but not limited to any state attorneys general office, Governors office, political subdivision, instrumentality, or authority of a State or States) under a contingency fee contract or other legal services arrangement to pursue civil litigation against private defendants. In addition to identifying the case, and as part of your response, provide the following:**

Response: See Attachment A.

- a. The name of the state or local government officials and related entities involved with the contingency fee contract or legal services arrangement.**

Response: See Attachment B.

- b. A detailed description (including dates and amounts) of any political campaign contributions from you or your law firm to any of the state or local government officials identified in your response to question 1(a).**

Response: My firm does not maintain a list of contributions by members or employees to elected public officials, and therefore I have no way to gather the information requested as it relates to members or employees. I have done a diligent and reasonable inquiry of the attorneys in the firm and am able to provide the following information:

My firm was retained by the State of Rhode Island by and through its then Attorney General Sheldon Whitehouse to represent the State in litigation against the lead paint industry in 1999. According to Rhode Island Board of Elections files, I contributed \$2,000 in 1998 to Sheldon Whitehouse's 1998 campaign for Rhode Island Attorney General. In addition, although I cannot find a record of it, I do believe that Joseph F. Rice and I contributed to Governor Christine Gregoire's campaign for governor of the State of Washington.

- c. The amount of any money (whether by contingency fee or otherwise) you or your firm received in the representation.**

Response: In the lead paint case brought on behalf of Rhode Island and other government entity, neither my firm nor I received any money. With respect to other cases, both my prior firm (MRRM, P.A.) and I have received money pursuant to the Master Settlement Agreement for tobacco litigation. The monies that I will receive as deferred compensation from the tobacco litigation are listed on my "Net Worth Statement" submitted to the Senate Judiciary Committee.

- 2. Identify all states, local governments or municipalities where you or your law firm pursued lead paint litigation. Please note any litigation similar to that brought in Rhode Island. As part of your response, provide the following:**

Response: See the lead paint section of Attachment A in which Motley Rice LLC or predecessor firms were hired or otherwise engaged by one or more elected officials.

- a. The names of all state and local government officials with whom you or your law firm (including their agents or representatives) contacted or communicated.**

Response: See the lead paint section of Attachment B in which Motley Rice LLC or predecessor firms were hired or otherwise engaged by one or more elected officials.

- b. To the extent not already covered by question 1, provide a detailed description (including dates and amounts) of any political campaign contributions from you or your law firm to any of the state or local government officials identified in this response.**

Response: None.

- c. If you or your law firm entered into any contingency fee arrangement to pursue lead paint litigation on behalf of any of these other states or local government officials, please provide those contracts to the Committee.**

Response: I am providing all of the contracts.

- 3. As part of your contingency fee contract with the State of Rhode to pursue lead paint litigation against defendant paint companies, did you or your law firm agree to pay all the costs and expenses of prosecuting that litigation?**

Response: We agreed to pay all of the costs and expenses of prosecuting such claims. The agreement states as follows: "All costs and expenses of prosecuting such claims, including, without limitation, expert witness fees, costs of depositions, discovery, and travel, will be borne by Ness, Motley, Loadholt, Richardson & Poole."

- 4. In the Rhode Island lead paint case, the State asked the trial court to immediately begin implementing an abatement plan for the alleged public nuisance, and to appoint co-examiners, or outside experts, to aid in the development of the complex plan. Although the defendants asked the court to refrain from doing so pending their appeal, the court sided with the State; the court seemed to have been persuaded, at least in part, by the State's contention that reimbursement of the co-examiner fees could be sought if the verdict was reversed on appeal. After the Rhode Island Supreme Court did, in fact, reverse and vacate the judgment, the defendants moved for such reimbursement. At a hearing on that motion, the State**

argued that reimbursement could not be ordered because the State had sovereign immunity. The trial court ultimately rejected that argument and ordered the State to pay the fees.

- a. **Did you play any role, either as counsel or in an advisory capacity, in any proceedings relating to the co-examiner fees, either before or after the Rhode Island Supreme Court's decision?**

Response: Yes.

- b. **Although it appears Motley Rice had agreed to pay all costs associated with the litigation, the firm contended it was not responsible for these fees. You yourself commented to the press that Motley Rice "certainly never offered, intended or agreed to pay defense costs in the case." Eric Tucker, *R.I., Paint Cos. Await Decision on Lawsuit Costs*, ASSOCIATED PRESS, Mar. 28, 2009. In view of Rhode Island's pending budget deficit, explain why you personally disavowed this contractual obligation to pay such costs and expenses of litigation after the State was ordered by a court reimburse defense costs associated with the lead paint litigation.**

Response: The contract required that Ness, Motley, Loadholt, Richardson & Poole incur "[a]ll costs and expenses of prosecuting such claims." It was never anticipated by either party, nor does the contract require, that it would include opposing counsel's costs, only the costs of prosecuting the claims.

- c. **Did you or your law firm ever reimburse the State of Rhode Island to cover court-ordered payment of defense costs from the lead paint litigation?**

Response: There are no court-ordered payments of defense costs from the lead paint litigation in Rhode Island.

1. **Do you agree that when state attorneys general enter into contingency fee arrangements with private law firms to pursue civil litigation on behalf of a state, the process should be open and transparent?**

Response: Yes.

- a. **Was the lead paint litigation contingency fee contract between Motley Rice and the State of Rhode Island procured under an open and transparent process?**

Response: Yes.

- b. **Was the lead paint litigation contingency fee contract made publicly available prior to its execution?**

Response: I am unaware whether the Attorney General made the contract publicly available prior to its execution.

- c. Did the Rhode Island state legislature approve the lead paint litigation contingency fee contract between Motley Rice and the State of Rhode Island?**

Response: No.

- 6. At your hearing, I asked whether you approached Senator Whitehouse, in his capacity as Rhode Island Attorney General, to initiate the Rhode Island lead paint litigation. You stated that you did not, but then testified that your firm was asked to “analyze the law and the facts in the case, and we prepared an analysis in a binder and turned it over to then-Attorney General Pine and then to Attorney General Whitehouse.” However, during the lead paint litigation (*State of Rhode Island v. Lead Industries Association, Inc., et al.*, C.A. No. 99-5226), then-Rhode Island Attorney General Whitehouse testified that it was your firm (then Ness Motley) that approached him about bringing the case:**

Q. Can you tell me who approached you? Is it true that Ness Motley approached you about bringing this kind of case?

A. Yes, it is.

Please explain the discrepancy in your testimony.

Response: I do not know specifically what then Attorney General Whitehouse was referring to in his deposition. I assume he meant that his initial involvement in this matter began when he reviewed a binder that Ness Motley attorneys had prepared for the Rhode Island Attorney General’s Office at the request of former Attorney General Jeffrey Pine.

- 7. Please describe your involvement in the litigation brought by Sherwin-Williams against your firm in the Court of Common Pleas of Cuyahoga County, Ohio concerning certain documents belonging to Sherwin Williams that were obtained without the company’s consent and alleged to be privileged. (*Sherwin Williams Co. v. Motley Rice LLC*, No. CV 09 689237 (Ohio Ct. Common Pleas Apr. 03, 2009)).**

Response: I have no involvement in that case except to assist my firm’s counsel in the defense. I am not listed as a defendant in the case or mentioned in the complaint.

- a. Do you know the identity of any of the unidentified “Doe” defendants in that lawsuit? Are you one of them?**

Response: I do not know the identities of any John Does (if any even exist). I have no reason to believe that I am one of them.

- b. At present, do you have any reason to believe that you may be deposed or subject to any discovery in the lawsuit?**

Response: The firm's attorneys have informed me that Sherwin Williams has requested my deposition in this case.

- c. Have you discussed this litigation with any other member of the Motley Rice firm? If so, with whom did you discuss it, when, and what was the content of the discussion?**

Response: Yes, I have discussed the litigation with other members of Motley Rice. As to the contents of those communications, those communications may be subject to attorney-client or the work-product privileges.

- d. Do you have any other information related to the Sherwin-Williams lawsuit? If so, please describe and/or provide to the Committee.**

Response: The Rhode Island Superior Court judge who presided for ten years over this litigation specifically found, after full briefing and hearing on the issues at the center of Sherwin-Williams' lawsuit, that the documents at issue in the Sherwin Williams law suit were not privileged and that all counsel acted in an "exemplary fashion" with regard to this matter specifically and in the litigation generally.

- e. Do you believe it would be appropriate for Motley Rice to retain documents that Sherwin-Williams has claimed are privileged and confidential?**

Response: It would depend on the particular applicable state law and the facts surrounding their claim of privilege.

- f. Have you asked Motley Rice to return the misappropriated document belonging to Sherwin-Williams?**

Response: By agreement, all copies of the disputed documents that Sherwin-Williams claims were privileged have been turned over to the trial court in Ohio. Motley Rice has not retained any copies of the document.

- g. Were you familiar with these documents, prior to this suit being filed in Ohio? Please explain your answer.**

Response: I saw the documents prior to suit being filed in Ohio. I briefly saw them when they were first faxed to our firm and then again a few years later, I saw them when we submitted one page of the documents to the court in Rhode Island. I would not say I was familiar with the documents in any fashion.

8. **You have acted as counsel on behalf of numerous States in bringing lawsuits against lead paint and tobacco manufacturers. If confirmed, you may preside over cases involving lead paint or tobacco manufacturers and mass tort claims in general. At your hearing, I asked whether, given your extensive representation in these types of matters, you had thought about recusal. Please answer each of the following questions fully. Reciting 28 U.S.C. § 455 is not sufficient.**

- a. **Would you recuse yourself from any action involving a party that has been adverse to a party represented by either you or your firm?**

Response: I would make that decision on a case-by-case basis after a thorough analysis of the prevailing issues presented by the parties and based on the applicable statutes, rules and Canon 3 of the Code Conduct for United States Judges. I would be guided specifically by Canon 3 (C) (1) that requires a judge to disqualify himself or herself if “the judge’s impartiality might reasonably be questioned,” or if I had “personal knowledge of disputed evidentiary facts” in the case. If I determined that my previous involvement as an advocate required my recusal from the case, then I would recuse myself.

- b. **Would you recuse yourself from actions that involve paint manufacturers that were named in *State of Rhode Island v. Lead Industries Association* 951 A.2d 428 (R.I. 2008)?**

Response: I would make that decision on a case-by-case basis after a thorough analysis of the prevailing issues presented by the parties and based on the applicable statutes, rules and Canon 3 of the Code Conduct for United States Judges. I would be guided specifically by Canon 3 (C) (1) that requires a judge to disqualify himself or herself if “the judge’s impartiality might reasonably be questioned,” or if I had “personal knowledge of disputed evidentiary facts” in the case. If I determined that my previous involvement as an advocate required my recusal from the case, then I would recuse myself.

- c. **Would you recuse yourself from actions that involve paint manufacturers that were named in *Steven Thomas v. Mallett*, 701 N.W.2d 523 (Wis. 2005)?**

Response: I would make that decision on a case-by-case basis after a thorough analysis of the prevailing issues presented by the parties and based on the applicable statutes, rules and Canon 3 of the Code Conduct for United States Judges. I would be guided specifically by Canon 3 (C) (1) that requires a judge to disqualify himself or herself if “the judge’s impartiality might reasonably be questioned,” or if I had “personal knowledge of disputed evidentiary facts” in the case. If I determined that my previous involvement as an advocate required my recusal from the case, then I would recuse myself.

- d. **Would you recuse yourself from actions that involve paint manufacturers in general?**

Response: I would make that decision on a case-by-case basis after a thorough analysis of the prevailing issues presented by the parties and based on the applicable statutes, rules and Canon 3 of the Code Conduct for United States Judges. I would be guided specifically by Canon 3 (C) (1) that requires a judge to disqualify himself or herself if “the judge’s impartiality might reasonably be questioned,” or if I had “personal knowledge of disputed evidentiary facts” in the case. If I determined that my previous involvement as an advocate required my recusal from the case, then I would recuse myself.

e. Would you recuse yourself from actions that involve the tobacco companies involved in the Master Settlement that you helped negotiate and draft?

Response: Yes, if it involved any of the Original Participating Manufactures that contribute to the payment of attorney fees.

f. Would you recuse yourself from all actions that involve companies that are a party to litigation on which some or all of your compensation depends?

Response: Yes.

g. Would you recuse yourself from actions that involve tobacco companies or tobacco retailers?

Response: Yes, if it involved any of the Original Participating Manufacturers that contribute to the payment of attorney fees. In addition, I would further make that decision on a case-by-case basis after a thorough analysis of the prevailing issues presented by the parties and based on the applicable statutes, rules and Canon 3 of the Code Conduct for United States Judges. I would be guided specifically by Canon 3 (C) (1) that requires a judge to disqualify himself or herself if “the judge’s impartiality might reasonably be questioned,” or if I had “personal knowledge of disputed evidentiary facts” in the case. If I determined that my previous involvement as an advocate required my recusal from the case, then I would recuse myself.

h. Would you recuse yourself from actions that involve product manufacturers?

Response: I would make that decision on a case-by-case basis after a thorough analysis of the prevailing issues presented by the parties and based on the applicable statutes, rules and Canon 3 of the Code Conduct for United States Judges. I would be guided specifically by Canon 3 (C) (1) that requires a judge to disqualify himself or herself if “the judge’s impartiality might reasonably be questioned,” or if I had “personal knowledge of disputed evidentiary facts” in the case. If I determined that my previous involvement as an advocate required my recusal from the case, then I would recuse myself.

9. **In your Questionnaire, you stated: “I do not foresee any recurrent basis for disqualification, except possibly in connection with matters in which my firm or my brother is counsel for a party.”**

- a. **Please explain what you mean by “possibly.”**

Response: I meant that if Mottley Rice (where my brother is a partner) came before me in a matter, I would recuse myself. The use of the term “possibly” reflects my uncertainty as to whether any matters involving him would be “recurrent.”

- b. **Under what circumstances would you choose not to recuse yourself if your brother or your law firm partners/colleagues were to appear before you as counsel for a party?**

Response: I would always recuse myself if my brother or other family member came before me as a litigant or attorney. I would always recuse myself from any case in which a law firm where my brother or other family member is partner. For a period of years—the specific numbers of years appropriate for recusal, which I would determine by following the rules and seeking guidance from colleagues on the bench—I would recuse myself from cases involving my former law firm partners/colleagues.

ATTACHMENT A
LIST OF LAWSUITS

Tobacco

Blaylock et al. v American Tobacco Co. et al, Circuit Court, Montgomery County, No. CV-96-1508-PR

State of Alaska v. Philip Morris, Inc., et al, Superior Court, First Judicial District of Juneau, No. IJU-97915 CI (Alaska)

State of Hawaii v. Brown & Williamson Tobacco Corp., et al., Circuit Court, First Circuit, No. 97-0441-01 (Haw.)

State of Idaho v. Philip Morris, Inc., et al., Fourth Judicial District, Ada County, No. CVOC 9703239D (Idaho)

State of Iowa v. R.J. Reynolds Tobacco Company et al., Iowa District Court, Fifth Judicial District, Polk County, No. CL71048 (Iowa)

State of Kansas v. R.J. Reynolds Tobacco Company, et al., District Court of Shawnee County, Division 2, No. 96-CV-919 (Kan.)

Ieyoub v. The American Tobacco Company, et al., 14th Judicial District Court, Calcasieu Parish, No. 96-1209 (La.)

Commonwealth of Massachusetts v. Philip Morris Inc., et al., Middlesex Superior Court, No. 95-7378 (Mass.)

Kelley v. Philip Morris Incorporated, et al., Ingham County Circuit Court, 30th Judicial Circuit, No. 96-84281-CZ (Mich.)

State of Montana v. Philip Morris, Inc., et al., First Judicial Court, Lewis and Clark County, No. CDV 9700306-14 (Mont.)

State of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior Court, Chancery Division, Middlesex County, No. C-254-96 (N.J.)

State of New York et al. v. Philip Morris, Inc., et al., Supreme Court of the State of New York, County of New York, No. 400361/97 (N.Y.)

State of Ohio v. Philip Morris, Inc., et al., Court of Common Pleas, Franklin County, No. 97CVH055114 (Ohio)

State of Oklahoma, et al. v. R.J. Reynolds tobacco Company, et al., District court, Cleveland County, No. CJ-96-1499-L (Okla.)

State of Oregon v. The American Tobacco Co., et al., Circuit Court, Multnomah County, No. 9706-04457 (Or.)

Rossello, et al. v. Brown & Williamson Tobacco Corporation, et al., U. W. District Court, Puerto Rico, No. 97-1910JAF

State of Rhode Island v. American Tobacco Co., et al., Rhode Island Superior Court, Providence, No. 97-3058 (R.I.)

State of South Carolina v. Brown & Williamson Tobacco Corporation, et al., Court of Common Pleas, Fifth Judicial Circuit, Richland County, No. 97-CP-40-1686 (S.C.)

State of Utah v. R.J. Reynolds Tobacco Company, et al., U.S. District Court, Central Division, No. 96 CV 0829W (Utah)

State of Vermont v. Philip Morris, Inc., et al., Chittenden Superior Court, Chittenden County, No. 744-97 (Vt.) and 5816-98 (Vt.)

State of Washington v. American Tobacco Co. Inc., et al., Superior Court of Washington, King County, No. 96-2-1505608SEA (Wash.)

McGraw, et al. v. The American Tobacco Company, et al., Kanawha County Circuit Court, No. 94-17-7 (W. Va.)

Lead Paint

State of Rhode Island v. Lead Industries Assn. C.A. No 99-5229

In Re Lead Paint Litigation, Case Code: 702-MT, Superior Court of New Jersey

City of Cincinnati v. Sherwin-Williams et al., C.A. No. A0611226

City of Columbus v. Sherwin-Williams et al., 06CVH-16480

Ohio v. Sherwin-Williams et al., 07CVC-04-4857

City of East Cleveland v. Sherwin-Williams et al., CA No CV-06-602785

City of Athens v. Sherwin Williams, et al., C.A. No. 07CI136

City of Massillon v. Sherwin-Williams et al., C.A. No. 07 CV 01224

City of Canton v. Sherwin-Williams et al., C.A. NO. 06 CV 05048

City of Dayton, Ohio v. Sherwin-Williams, et al., C. A. No. 07 CV 12701

City of Cleveland v. Sherwin-Williams et al., C.A. No. CV-06-602785

City of Lancaster v. Sherwin-Williams et al., C.A. No. 06 CV 1055

City of Toledo v. Sherwin-Williams et al., C.A. No. G-4801-CI-200606040

City of Youngstown v. Sherwin-Williams, et al., C.A. No. 07-CV-1167

City of New York Housing Authority v. Lead Industries Assn., Index No. 14365/89, IAS Part 39

County of Santa Clara, et al. v. Atlantic Richfield Company, et al., Case No. CV 788657

Other

Kurikose v. Fed. Home Loan Mortgage Co., No. 1:08-cv-7281 (JFK) (S.D.N.Y);

Various individual asbestos cases on behalf of Bob Whittaker, Director, Division of Workers' Compensation Funds, Commonwealth of Kentucky Labor Cabinet

State of Oklahoma v. Tyson Foods, Inc., et al., 4:05-cv-00329-GKF-PJC, N.D. Okla.

In re: W.R. Grace & Co., et al., Case No. 01-01139 (JKF), D. Del. (Bankruptcy) - Claims No. 6937-6944 (State of Washington claims); Claims No. 6945-6947 (Port of Seattle claims); Claims No. 3405 (Fargo Housing and Redevelopment Authority claims).

ATTCAHMENT B
LIST OF PUBLIC OFFICIALS

Tobacco

| | |
|------------------------------------|------------------------------------|
| Honorable Bruce M. Botelho | Attorney General of Alaska |
| Honorable Margery S. Bronster | Attorney General of Hawaii |
| Honorable Alan G. Lance | Attorney General of Idaho |
| Honorable Tom Miller | Attorney General of Iowa |
| Honorable Carla J. Stovall | Attorney General of Kansas |
| Honorable Richard P. Ieyoub | Attorney General of Louisiana |
| Honorable Scott Harshbarger | Attorney General of Massachusetts |
| Honorable Frank J. Kelley | Attorney General of Michigan |
| Honorable Joseph P. Mazurek | Attorney General of Montana |
| Honorable Peter Verniero | Attorney General of New Jersey |
| Honorable Dennis C. Vacco | Attorney General of New York |
| Honorable Betty D. Montgomery | Attorney General of Ohio |
| Honorable W. A. Drew Edmondson | Attorney General of Oklahoma |
| Honorable Hardy Myers | Attorney General of Oregon |
| Honorable Jose A. Fuentes-Agostini | Attorney General of Puerto Rico |
| Honorable Jeffrey B. Pine | Attorney General of Rhode Island |
| Honorable Charlie Condon | Attorney General of South Carolina |
| Honorable Jan Graham | Attorney General of Utah |
| Honorable William H. Sorrell | Attorney General of Vermont |
| Honorable Christine O. Gregoire | Attorney General of Washington |

Honorable Darrell V. McGraw Jr.

Attorney General of West Virginia

Lead Paint

Honorable Sheldon Whitehouse

Attorney General of Rhode Island

Louise Renne, Esq.

San Francisco City Attorney

Mayor John T. Gregorio

Linden, New Jersey

Mayor Sara B. Bost

Irvington, New Jersey

Mayor Karen McCoy Oliver

Hillside, New Jersey

George Devaney

Union County, New Jersey Manager

Mayor Robert L. Bowser

East Orange, New Jersey

Mayor Joseph V. Doria

Bayonne, New Jersey

Thomas S. Plaia

Township Attorney – Union Township, NJ

Mayor Samuel Rivera

Passaic, New Jersey

John D. Massi

Borough Attorney - Roselle, New Jersey

Mims Hackett, Jr.

Mayor of Orange, New Jersey

Unknown

Essex County, New Jersey

Unknown

Jersey City, New Jersey

Unknown

West New York, New Jersey

Garry E. Hunter

Athens, Ohio Director of Law

Joseph Martuccio

Canton, Ohio Director of Law

Pericles G. Stergios

Massillon, Ohio Director of Law

Richard C. Pfeiffer, Jr.

Columbus City Attorney

Mayor Eric J. Brewer

City of East Cleveland

Terre Vandervoort

Lancaster, Ohio Director of Law

John Madigan

Toledo, Ohio Director of Law

Iris Guglucello

Youngstown, Ohio Director of Law

Milton R. Dohoney, Jr.

Cincinnati, Ohio City Manager

Ricardo Elias Morales

General Counsel, NYC Housing Authority

Other

Richard H. Moore

Treasurer, State of North Carolina & Sole
Trustee of the North Carolina Retirement
Systems

Linda Strout

Port of Seattle

Lynn Fundingsland

Fargo Housing Authority

Unknown

Deputy Attorney General, State of
Washington

Bob Whittaker

Director, Kentucky Division of Worker'
Compensation Fund

W.A. Drew Edmondson

Oklahoma Attorney General

RETAINER AGREEMENT

The State of Rhode Island ("State"), by and through Sheldon Whitehouse, its Attorney General ("Attorney General"), hereby retains the law firms of Ness, Motley, Loadholt, Richardson & Poole, 321 South Main Street, Providence, Rhode Island, and Decof & Grimm, One Smith Hill, Providence, Rhode Island (the "Law Firms"), to pursue any and all claims against any and all persons, corporations and other entities for damages of every kind arising out of the manufacture, sale, distribution and use of lead paint, upon the following terms and conditions:

1. The Law Firms will diligently and forcefully prosecute all claims which, in their judgment, should be asserted against any and all persons, firms or corporations for damages arising out of or referable to the manufacture, sale, distribution or use of lead paint.

2. The Attorney General shall have the right to designate from either of the Law Firms chief counsel, with full authority and responsibility for all case management, trial strategy and other decisions necessary or incident to the necessary prosecution of the claims.

3. The Law Firms will render all services necessary in the proper prosecution of the claims, including consultation, advice, research, preparation, negotiation, litigation and all appeals, if necessary, on a contingent fee basis, to-wit: sixteen and two-thirds percent (16 2/3%) of any and all moneys received by the State in settlement, judgment or otherwise. As payments are received by the State on account of the claims, whether by settlement, judgment or otherwise, the State will promptly pay the Law Firms.

4. All costs and expenses of prosecuting said claims, including, without limitation, expert witness fees, costs of depositions, discovery, and travel, will be borne by Ness, Motley, Loadholt, Richardson & Poole. In the event of recovery of any moneys as the result of said claims, the costs expensed by the Law Firms shall be reimbursed them in addition to the contingent fees hereinabove specified. Such reimbursement shall be made at the time of the recovery by the State. All expenditures for costs and expenses shall be reimbursed only on the basis of itemized copies for costs billed to and paid by either or both of the Law Firms. The Law Firms agree to abide by and conform to State of Rhode Island requirements with respect to travel expenditures and per diems for elected officers, as set forth in Exhibit A attached hereto and incorporated herein.

5. In the event that the services of either Law Firm shall be terminated for any reason, such Law Firm shall be entitled to compensation on the basis of quantum meruit, but in no event less than its share of sixteen and two-thirds

percent (16 2/3%) of any and all offers of settlement received by the State at the time of such termination. Such payment of quantum meruit fees shall be paid by the State at the time of final disposition of all claims and recovery of moneys.

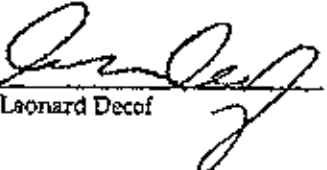
6. In the event the Litigation is resolved, by settlement or judgment, under terms involving the provision of goods or services, equitable relief, or any other "in-kind" payment, the parties hereto agree to seek, as part of any such settlement, compensation for the Law Firms equivalent to the contingency fee and expenses to which the Law Firms would be entitled under this Agreement. In the event the Attorney General is unable to secure such compensation for the Law Firms as part of any "in-kind" settlement, the Attorney General agrees to petition the General Assembly to appropriate funds to compensate the Law Firms.

7. The parties hereto agree to extend their best efforts, to the extent legally possible, against all defendants to recover counsel fees for the Law Firms directly from the defendants, in addition to any settlement, whether monetary or otherwise. All such recovery of fees will be credited in full against all fees owed by the State to the Law Firms under this Agreement, whether for monetary or non-monetary recovery.

This Agreement shall be binding upon the parties hereto, and their respective successors and assigns.

EXECUTED this 8th day of October, 1999.

DECOF & GRIMM

By: 
Leonard Decof

NESS, MOTLEY, LOADHOLT,
RICHARDSON & POOLE

By: 
John J. McConnell, Jr.

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS


By: 
Sheldon Whitehouse, Attorney General

Freedom/Cases/Lead Paint/Agreements/Retention Agreement/1-2

The Retainer Agreement entered into between the State of Rhode Island and Ness, Motley, Loadholt, Richardson & Poole and Decof & Grimm on or about October 8, 1999, is hereby amended as follows:

1. The law firm of Decof & Decof shall be substituted for the law firm of Decof & Grimm and the law firm of Motley Rice LLP shall be substituted for the law firm of Ness, Motley, Loadholt, Richardson & Poole.
2. Notwithstanding any other provisions contained in the Retainer Agreement, as chief legal officer of the State of Rhode Island the Attorney General shall at all times retain full control of the litigation, including but not limited to who to sue, what causes of action(s) should be asserted, and settlement or termination of this lawsuit. This provision does not prohibit outside counsel from exercising their professional judgment in prosecuting this case in accord therewith.
3. Paragraph 2 of the Retainer Agreement is hereby deleted in its entirety.
4. This Amendment shall be entered on a non pro tunc basis to the date of the execution of the Retainer Agreement.

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS

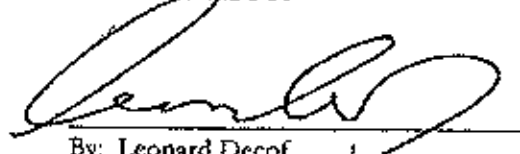

By: Patrick C. Lynch
Attorney General

MOTLEY RICE LLP


By: John J. McConnell, Jr.

Dated: 9-10-03

DECOF & DECOF


By: Leonard Decof

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT, entered into this 8th day of February, 2006⁷ BY AND BETWEEN:

THE CITY OF ORANGE, NEW JERSEY, a municipal corporation of the State of New Jersey with its principal place of business located at City Hall, 29 North Day Street, Orange, New Jersey 07050
(hereinafter referred to as the "CITY")

and

CITY OF ORANGE LEAD LITIGATION GROUP, which is comprised of the firms of:

Motley Rice, LLC
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
P. O. Box 934
Wayne, New Jersey 07474-0934

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

James J. Plaia, Esq.
10 South Prospect Street
Verona, New Jersey 07044

WITNESSETH THAT:

WHEREAS, the City, desires to engage a committee of lawyers known as "City of Orange Lead Litigation Group" ("LLG") to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation, American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (the "Claim").

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MAR 03 2007

JON L. GELMAN

WHEREAS, the LLG desires to perform said services for the City,

NOW THEREFORE,

For the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the city and the LLG covenant and agree as follows:

1. SCOPE OF SERVICES: The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract:

Provide legal counsel and related legal services to the City regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include but not be limited to the following:

1. Investigating the City's potential claims against lead manufacturers and/or providing legal representation to the City in a suit against the lead manufacturers, et al. The Corporation Counsel's Office will designate an attorney from its office to be assigned this case. The Corporation Counsel attorney may participate actively in the case, and will specify whether he or she should appear as a counsel of record. The correspondence from outside counsel to the City should be directed to this attorney.
2. The extent of the Corporation Counsel attorney's involvement will vary. In some instances the attorneys will participate directly in pretrial and trial activities. Corporation Counsel legal assistants and support services may be used where feasible. The attorney and LLG should agree as early as possible on a division of efforts and then reassess that decision as the case unfolds. The goal should be to utilize City resources where available, consistent with the needs of the case.
3. The City agrees to provide for the cooperation of all of its agencies with LLG for the purpose of the investigation and/or prosecution of the City's claim.

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MAR 03 2007

JON L. GELMAN

2. SERVICES.

COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the City shall pay a contingent fee to LLG out of any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected plus all costs and expenses incurred by the LLG in this matter. The City hereby further agrees to pay to the LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation. All remaining funds shall go to the City after payment of all expenses and costs incurred by the LLG in this matter.
- b. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the City and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for prosecution of this litigation.

3. TERMINATION

- a. It is further agreed that neither the LLG nor the City may, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

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MAR 03 2007

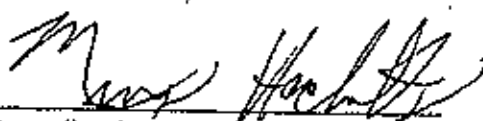
JON L. GELMAN

4. JURISDICTIONAL LANGUAGE:


It is agreed by and between the City and LLG that this retainer agreement and any dispute which may arise thereunder, shall be governed, controlled and interpreted using the laws of the State of New Jersey.

IN WITNESS WHEREOF, the City and the Lead Litigation Group have executed this Contract as of the date first herein written.

CITY OF ORANGE

By: 
Mims Hackett, Jr., Mayor

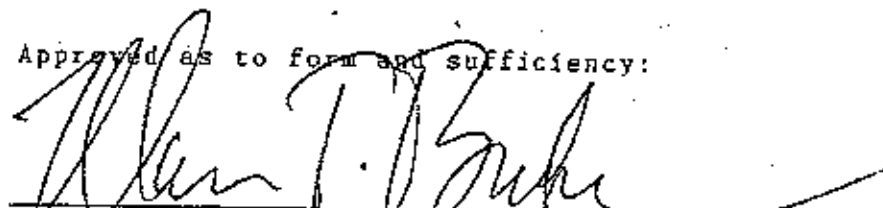
CITY OF ORANGE LEAD LITIGATION GROUP

By: 
Michael P. Burakoff, Esq.

ATTEST:

 2/8/07
Dwight Mitchell, Municipal Clerk

Approved as to form and sufficiency:


Marvin T. Braker, City Attorney

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MAR 03 2007

JON L. GELMAN

CITY COUNCIL

The City of Orange Township, New Jersey

DATE October 1, 2002

NUMBER 322-2002

TITLE: A RESOLUTION AUTHORIZING THE CITY OF ORANGE TOWNSHIP TO INSTITUTE SUIT AGAINST THE LEAD INDUSTRY AND RETAINING THE LEGAL SERVICES OF THE CITY OF ORANGE LEAD LITIGATION GROUP.

WHEREAS, lead poisoning has caused permanent and devastating health problems for the children of the City of Orange Township; and,

WHEREAS, the problems and costs which lead poisoning causes the citizens of the City of Orange Township are staggering; and,

WHEREAS, the City, its taxpayers, and other public entities are forced to bear additional costs as a result of lead poisoning in the City of Orange Township; and,

WHEREAS, the lead industry failed to take reasonable, responsible steps which would have prevented lead poisoning in the City of Orange Township; and,

WHEREAS, the City of Orange Township has decided to take action by instituting suit against the lead industry; and,

WHEREAS, the City of Orange Township wishes to retain the legal service of the City of Orange Lead Litigation Group; and,

WHEREAS, this contract is awarded without public bidding, as a professional service exception to the Local Public Contracts Law as set forth in N.J.S.A. 40A:11-5(1)(a)(i).

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF ORANGE TOWNSHIP, that:

1. The Mayor and Municipal Clerk are hereby authorized to execute a contract with the following law firms on a contingency basis as follows:

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
P.O. Box 934
Wayne, New Jersey 07474-0934

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

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MAR 03 2007

JON L. GELMAN

James J. Plaia, Esq.
10 South Prospect Street
Verona, New Jersey 07044

Sheldon Bross, Esq.
Giantomasi, Bross & Oliveira, P.C.
292 Lafayette Street
Newark, New Jersey 07105

2. The Mayor and Municipal Clerk are authorized to execute the attached contract and it shall be the responsibility of the City Attorney to provide the Mayor and Municipal Council with periodic status reports as to legal services provided as outlined in the attached contract.

3. This contract is awarded as a professional service contract pursuant to N.J.S.A. 40A:11-5(1)(a)(i).

4. A Notice of this action shall be published in the newspaper, as required by law within ten (10) days of its passage.

Adopted: October 1, 2002

Dwight Mitchell /rp
Dwight Mitchell, Municipal Clerk

Allen Barnhardt /rp
Allen Barnhardt, Council President

REGULAR MEETING - 10/1/02
OFF CONSENT AGENDA

MOTION TO ADOPT: Peters

SECOND: Lewis

YEAS: Eason, Gaunt, Lewis, Peters, Vandermeer & Council President
Barnhardt

NAYS: None

ABSTENTIONS: None

ABSENT: Rimes

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MAR 03 2007

JON L. GELMAN

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT, entered into this 28th day of December, 2001 BY
AND BETWEEN:

THE CITY OF LINDEN, COUNTY OF UNION, NEW JERSEY, a municipal
corporation of the State of New Jersey with its principal place of business located at City Hall,
301 North Wood Avenue, Linden, New Jersey (hereinafter referred to as the "CITY")

AND

CITY OF LINDEN LEAD LITIGATION GROUP, which is comprised of the firms
of

Ness, Motley, Loadholt, Richardson & Poole, PC
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
PO Box 934
Wayne, New Jersey 07474-0934

Michael P. Burakoff, P.A.
18 Bank Street - 4th Floor
Morristown, New Jersey 07960

James J. Plaia, Esq.
10 South Prospect Street
Verona, New Jersey 07044

Thornton & Naumes
100 Summer Street - 30th Floor
Boston, Massachusetts 02110

Wolentz, Goldman & Spitzer
90 Woodbridge Center Drive
Woodbridge, New Jersey 07095

WITNESSETH THAT:

WHEREAS, the City desires to engage a committee of lawyers known as "City of
Linden Lead Litigation Group" ("LLG") to render certain professional services in connection
with matters pertaining to any and all claims which the City has, or may have, against E.I.
DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation,
American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra
Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers
and/or each of their successors, assigns and insurers (the "Claim"); and

WHEREAS, the LLG desires to perform said services for the City;

NOW THEREFORE,

For the reasons set forth above and in consideration of the mutual covenants and
promises of the parties hereto, the City and the LLG covenants and agrees as follows:

1. SCOPE OF SERVICES: The LLG shall perform the following tasks and services in
accordance with the objectives and assignments as determined under this Contract:

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JON L. GELMAN

Provide legal counsel and related legal services to the City regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include but will not be limited to the following:

- a. Investigating the City's potential claims against lead manufacturers and/or providing legal representation to the City in a suit against the lead manufacturers, et al. The Corporation Counsel's Office will designate an attorney from its office to be assigned this case. The Corporation Counsel attorney may participate actively in the case, and will specify whether he or she should appear as a counsel of record. This correspondence form outside counsel to the City should be directed to this attorney.
- b. The extent of the Corporation Counsel's involvement will vary. In some instances the attorneys will participate directly in pretrial and trial activities. Corporation Counsel's legal assistants and support services may be used where feasible. The attorney and LLG should agree as early as possible on a division of efforts and then reassess that decision as the case unfolds. The goal should be to utilize City resources where available, consistent with the needs of the case.
- c. The City agrees to provide for the cooperation of all of its agencies with LLG for the purpose of the investigation and/or prosecution of the City's claim.

2. SERVICES, COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the City shall pay a contingent fee to LLG out of any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected plus all costs and expenses incurred by the LLG in this matter. The City hereby further agrees to pay to the LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation. All remaining funds shall go to the City after payment of all expenses and costs incurred by the LLG in this matter.
- b. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorneys' fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the City and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for prosecution of this litigation.

3. TERMINATION:

- a. It is further agreed that neither the LLG nor the City may, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

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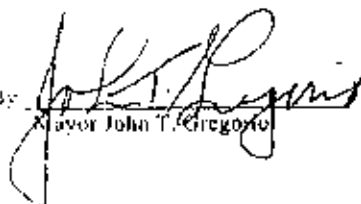
JON L. GELMAN

4. JURISDICTIONAL LANGUAGE:

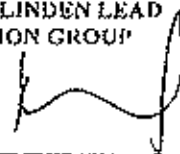
It is agreed by and between the City and LLG that this retainer agreement and any dispute which may arise hereunder shall be governed, controlled and interpreted using the laws of the State of New Jersey.

IN WITNESS WHEREOF the City and the Lead Litigation Group have executed this contract as of this date first herein written.

CITY OF LINDEN

By: 
Mayor John T. Gregorio

CITY OF LINDEN LEAD
LITIGATION GROUP

By: 

Michael P. Burakoff, Esq.
18 Bank Street
Morristown, N.J. 07960

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JAN 09 2002
JON L. GELMAN

WHEREAS, lead poisoning has caused permanent and devastating health problems for the children of the Township of Irvington; and

WHEREAS, the problems and costs which lead poisoning causes the citizens of the Township of Irvington are staggering; and

WHEREAS, the Township, its Taxpayers and other public entities are forced to bear additional costs as a result of lead poisoning in Irvington; and

WHEREAS, the lead industry has failed to take reasonable, responsible steps which would have prevented lead poisoning in the Township and

WHEREAS, the Township has determined to take action by instituting suit against the lead industry; and

WHEREAS, the Township of Irvington wishes to retain the services of the Township of Irvington Lead Litigation Group which consists of Sheldon Bross, Esq., Giantomasi, Bross & Oliveira, Esqs., 292 Lafayette Street, Newark, New Jersey 07105, Ness, Motley, Loadholt, Richardson & Poole, P.C., 321 South Main Street, Suite 402, Providence, Rhode Island 02903, Jon L. Gelman, Esq., 1450 Valley Road, Wayne, New Jersey 07474, Michael P. Burakoff, P.A. 18 Bank Street, 4th Floor, Morristown, New Jersey 07960; and

WHEREAS, this contract is awarded without public bidding, as a professional service exception to the Local Public Contracts Law as set forth in N.J.S.A. 40A:11-5(1)(a)(i):

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that:

1. The Mayor and Township Clerk is hereby authorized to execute the attached contract with the Township of Irvington Lead Litigation Group which consists of the following law firms, on a contingency basis, as follows: Sheldon Bross, Esq., Giantomasi, Bross & Oliveira, Esqs., 292 Lafayette Street, Newark, New Jersey 07105, Ness, Motley, Loadholt, Richardson & Poole, P.C., 321 South Main Street, Suite 402, Providence, Rhode Island 02903, Jon L. Gelman, Esq., 1450 Valley Road, Wayne, New Jersey 07474, Michael P. Burakoff, P.A. 18 Bank Street, 4th Floor, Morristown, New Jersey 07960.
2. The Township of Irvington Lead Litigation Group will provide the Township Attorney with periodic status reports as to legal services provided and the Township Attorney shall so provide same to the Mayor and Township Council.
3. This contract is awarded as a professional service contract pursuant to N.J.S.A. 40A:11-5(1)(a)(i).
4. Notice of this action shall be published in the appropriate newspaper, as required by law within ten (10) days of its passage.

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DEC 19 2001

JON L. GELMAN

For the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the Township and the LLC covenant and agree as follows:

1. **SCOPE OF SERVICES:** The Township of Irvington LLC shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract:

Provide legal counsel and related legal services to the Township regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include but not be limited to the following:

1. Investigating the Township's potential claims against lead manufacturers and/or providing legal representation to the Township in a suit against the lead manufacturers, et al. The Corporation Counsel's Office will designate an attorney from its office to be assigned this case. The Corporation Counsel attorney may participate actively in the case, and will specify whether he or she should appear as a counsel of record. The correspondence from outside counsel to the Township should be directed to this attorney

2. The extent of the Corporation Counsel attorney's involvement will vary. In some instances the attorneys will participate directly in pretrial and trial activities. Corporation Counsel legal assistants and support services may be used where feasible. The attorney and Township of Irvington LLC should agree as early as possible on a division of efforts and then reassess that decision as the case unfolds. The goal should be to utilize Township resources where available, consistent with the needs of the case.

3. The Township agrees to provide for the cooperation of all of its agencies with Township of Irvington LLC for the purpose of the investigation and/or prosecution of the Township's claim.

2. SERVICES.

COMPENSATION AND METHOD OF PAYMENT:

a. For and in consideration of the professional services to be rendered by the Township of Irvington LLC, the Township shall pay a contingent fee to Township of Irvington LLC out of any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected plus all costs and expenses incurred by the Township of Irvington LLC in this matter. The Township hereby further agrees to pay to the Township of Irvington LLC, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and

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DEC 19 2001

JON L. GILMAN

CONTRACT FOR LEGAL SERVICES
2001 BY

THIS AGREEMENT entered into this day of 2001 BY AND
BETWEEN:

THE TOWNSHIP OF IRVINGTON, NEW JERSEY, a municipal corporation of the State of New Jersey with its principal place of business located at Municipal Building, Civic Square, Irvington, New Jersey 07111. (hereinafter referred to as the "TOWNSHIP")

and

TOWNSHIP OF IRVINGTON LEAD LITIGATION GROUP, which is comprised of the firms of:

Sheldon Bross, Esq.
Giantomasi, Bross & Oliveira, P.C.
292 Lafayette Street
Newark, N.J. 07105

Jon L. Gelman, Esq.
1450 Valley Road
P.O. Box 934
Wayne, New Jersey 07474-0934

Nass, Motley, Leadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

WITNESSETH THAT:

WHEREAS, the Township, desires to engage a committee of lawyers known as "Township of Irvington Lead Litigation Group" ("Township of Irvington LLG") to render certain professional services in connection with matters pertaining to any and all claims which the Township has, or may have, against E.I. DuPont, Glidert Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation, American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (the "Claim").

WHEREAS, the Township of Irvington LLG desires to perform said services for the Township.

NOW THEREFORE,

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DEC 19 2001

JON L. GELMAN

expenses incurred by the Township of Irvington LLC in this matter in furtherance of this litigation. All remaining funds shall go to the Township after payment of all expenses and costs incurred by the Township of Irvington LLC in this matter.

b. In the event, and to the extent, that the Township is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the Township agrees to use its best efforts to ensure that the Township of Irvington LLC receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.

c. It is further agreed by and between the Township and the Township of Irvington LLC that the Township of Irvington LLC shall pay all reasonable expenses related to the prosecution of this litigation. The Township of Irvington LLC shall keep records of expenses it pays for prosecution of this litigation.

3. TERMINATION

a. It is further agreed that neither the Township of Irvington LLC nor the Township may, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.

b. The Township of Irvington LLC may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the Township of Irvington LLC shall not result in any increase of fee to the Township.

4. JURISDICTIONAL LANGUAGE:

It is agreed by and between the Township and Township of Irvington LLC that this retainer agreement and any dispute which may arise thereunder, shall be governed, controlled and interpreted using the laws of the State of New Jersey.

N WITNESS WHEREOF, the Township and the Lead Litigation Group have executed this Contract as of the date first herein written.

TOWNSHIP OF IRVINGTON

TOWNSHIP OF IRVINGTON
LEAD LITIGATION GROUP

By: _____

By: _____

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DEC 19 2001

JON L. GELMAN

RESOLUTION

WHEREAS, lead poisoning has caused permanent and devastating health problems for the children of the Township of Hillside ; and

WHEREAS, the problems and costs which lead poisoning causes the citizens of the Township of Hillside are staggering; and

WHEREAS, the Township, its taxpayers, and other public entities are forced to bear additional costs as a result of lead poisoning in the Township of Hillside; and

WHEREAS, the lead industry failed to take reasonable, responsible steps which would have prevented lead poisoning in the Township of Hillside; and

WHEREAS, the Township of Hillside has decided to take action by instituting suit against the lead industry; and

WHEREAS, the Township of Hillside wishes to retain the legal services of the Township of Hillside Lead Litigation Group; and

WHEREAS, this contract is awarded without public bidding, as a professional service exception to the Local Public Contracts Law as set forth in N.J.S.A. 40A:11-5(1)(a)(i).

NOW, THEREFORE, BE RESOLVED BY THE MUNICIPAL COUNSEL OF THE TOWNSHIP OF HILLSIDE, NEW JERSEY, THAT:

1. The corporation counsel is hereby authorized to execute a contract with the following law firms on a contingency basis as follows:

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
P. O. Box 934
Wayne, New Jersey 07474-0934

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

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DEC 04 2001

JON L. GELMAN

James J. Plaia, Esq.
10 South Prospect Street
Verona, New Jersey 07044

2. The Corporation Counsel is authorized to execute the attached contract and it shall be the responsibility of the Corporation Counsel to provide the Mayor and Municipal Council with periodic status reports as to legal services provided as outlined in the attached Contract.

3. This contract is awarded as a professional service contract pursuant to N.J.S.A. 40A:11-5(1)(a)(i).

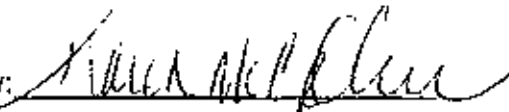
4. A Notice of this action shall be published in the newspaper, as required by law within ten (10) days of its passage.

STATEMENT

This Resolution authorizes a professional service contract between the Township of Hillside and the Township of Hillside Lead Litigation Group on a contingency fee basis.

Adopted: November 27, 2001

TOWNSHIP OF HILLSIDE

By: 
Mayor Karen McCoy Oliver

TOWNSHIP OF HILLSIDE
LEAD LITIGATION GROUP

By: 
JOHN J. McConnel, Jr.

RECEIVED
DEC 04 2001
JON L. GELMAN

AGREEMENT

This Agreement made and entered into this day of 2002 by and between the **COUNTY OF UNION**, a Body Politic of the State of New Jersey, having its principal place of business at the Union County Administration Building, Elizabethtown Plaza, Elizabeth, New Jersey, 07207 hereinafter referred to as **COUNTY** and the County of Union Lead Litigation Group which is comprised of the firms of:

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
P.O. Box 934
Wayne, NJ 07575-0934

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, NJ 07960

James J. Plaia, Esq.
10 South Prospect Street
Verona, NJ 07044

hereinafter referred to as **COUNSEL**.

WITNESSETH:

That the parties hereto agree as follows:

1. The **COUNTY** shall retain the services of the Union County Lead Litigation Group (LLG) to provide legal services representing the County of Union in connection with matters pertaining to any and all claims which the County has, or may have, against E.I. DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation,

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AUG 01 2002

JON L. GELMAN

American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers, pursuant to Resolution No. 1199-01 adopted on December 13, 2001 by the Union County Board of Chosen Freeholders.

2. In consideration of said **COUNSEL** furnishing the aforementioned services, **COUNTY** shall pay unto **COUNSEL** on a contingency basis, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation.

AFFIRMATIVE ACTION REGULATIONS

During the performance of the contract, the contractor agrees as follows:

a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Equal Employment Opportunity

Officer setting forth provisions of this non-discrimination clause.

b. The contractor or subcontractor, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

c. The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Agency Contracting Officer advising the labor union or workers representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented for time to time and the Americans with Disabilities Act.

e. The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 of the Regulations promulgated by the Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time.

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JON L. GELMAN

f. The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status or sex, affectional or sexual orientation and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

g. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable federal laws and applicable federal court decisions.

h. The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading, and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status or sex, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable federal law and applicable federal court decisions.

i. The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purpose of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

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AUG 01 2002
JON L. GELMAN

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:

Christie G. Jones
Clerk of the Board

COUNTY OF UNION

By George Devanney
GEORGE DEVANNEY
Union County Manager

APPROVED AS TO FORM:

Jeremiah D. O'Dwyer, Esq.
JEREMIAH D. O'DWYER, ESQ.
Union County Counsel

WITNESS:

By Jon L. Gelman 5/16/02
JON L. GELMAN, ESQ.

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AUG 6 2002

JON L. GELMAN

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MAY 16 2002

JON L. GELMAN

CITY COUNCIL OF EAST ORANGE

NOW, THEREFORE, BE RESOLVED BY THE CITY COUNSEL OF THE CITY OF EAST ORANGE, NEW JERSEY, that

1. The Mayor and City Clerk are hereby authorized and directed to execute a contract with the following law firms on a contingency basis (payment for professional services shall be made from a settlement or award and does not require the expenditure of municipal funds) as follows:

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Childress & Jackson, LLC
280 So. Harrison Street
East Orange, NJ 07018

Jon L. Gelman, Esq.
1450 Valley Road
P. O. Box 934
Wayne, New Jersey 07474-0934

Giantomasi, Bross & Oliveira, P.C.
292 Lafayette Street
Newark, New Jersey 07105

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

2. It shall be the responsibility of the East Orange Lead Litigation Group to provide Corporation Counsel with periodic status reports as to legal services provided and progress reports as outlined in the attached Contract. Corporation Counsel may amend said contract where appropriate.

3. This contract is awarded as a professional service contract pursuant to N.J.S.A. 40A:11-5(1)(a)(i).

4. A Notice of this action shall be published in the East Orange Record noting that the contract has been awarded without competitive bid as a professional service, and that the contract and the resolution authorizing it are available for public inspection in the Office of the City Clerk.

| Council Member | AYE | NAY | N.V. | A.B | VETO |
|----------------|-----|-----|------|-----|------|
| BROWN | X | | | | |
| MUNFORD | X | | | | |
| TURNER | | | | X | |
| JOHNSON | X | | | | |
| SMALL | X | | | | |

| Council Member | AYE | NAY | N.V. | A.B | VETO |
|----------------|-----|-----|------|-----|------|
| WILLIAMS | X | | | | |
| SAUNDERS | | | | X | |
| PATTERSON | X | | | | |
| CLARK | X | | | | |
| TALMADGE | X | | | | |

X Indicates Vote

A.B Absent

N.V. Not Voting (Councilor did not attend)

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT, entered into this 27th day of December, 2001 BY AND BETWEEN:

THE CITY OF EAST ORANGE, NEW JERSEY, a municipal corporation of the State of New Jersey with its principal place of business located at 44 City Hall Plaza, East Orange, New Jersey 07019 (hereinafter referred to as the "CITY")

and

CITY OF EAST ORANGE LEAD LITIGATION GROUP, which is comprised of the firms of:

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
P. O. Box 934
Wayne, New Jersey 07474-0934

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

Childress & Jackson, LLC
280 So. Harrison Street
East Orange, NJ 07018

Giantomasi, Bross & Oliveira, P.C.
292 Lafayette Street
Newark, New Jersey 07105

WITNESSETH THAT:

WHEREAS, the City, desires to engage a committee of lawyers known as "City of East Orange Lead Litigation Group" ("LLG") to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation, American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers

and/or each of their successors, assigns and insurers (the "Claim").

WHEREAS, the LLG desires to perform said services for the City,

NOW THEREFORE,

For the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the city and the LLG covenant and agree as follows:

1. **SCOPE OF SERVICES:** The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract:

Provide legal counsel and related legal services to the City regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include but not be limited to the following:

1. Investigating the City's potential claims against lead manufacturers and/or providing legal representation to the City in a suit against the lead manufacturers, et al. The Corporation Counsel's Office will designate an attorney from its office to supervise and monitor outside counsel. The Office of the Corporation Counsel may participate actively in the case, and will specify whether he or it will also appear as a counsel of record. The correspondence from outside counsel to the City shall be directed to the Office of Corporation Counsel.
2. The City agrees to provide for the cooperation of all of its agencies with LLG for the purpose of the investigation and/or prosecution of the City's claim.
3. LLG shall provide to the Corporation Counsel quarterly reports as to the status of litigation.

2. SERVICES.

COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the City shall pay a contingent fee to LLG out of any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected plus all costs and expenses incurred by the LLG in this matter. The City hereby further agrees to pay to the LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation specific to the

City. All remaining funds shall go to the City after payment of all expenses and costs incurred by the LLG in this matter. The contingency fee will be governed by the New Jersey Court Rules.

- b. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the City and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for prosecution of this litigation.

3. TERMINATION

- a. It is further agreed that LLG without the consent of the City, may not settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

4. JURISDICTIONAL LANGUAGE:

It is agreed by and between the City and LLG that this retainer agreement and any dispute which may arise thereunder, shall be governed, controlled and interpreted using the laws of the State of New Jersey.

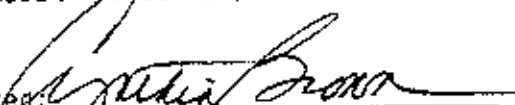
IN WITNESS WHEREOF, the City and the Lead Litigation Group have executed this Contract as of the date first herein written.

CITY OF EAST ORANGE

By:

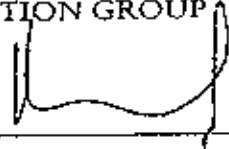

ROBERT L. BOWSER, MAYOR

Attested:


CYNTHIA BROWN, RMC/CMC
CITY CLERK

CITY OF EAST ORANGE LEAD
LITIGATION GROUP

By:


Michael P. Burakoff, Esq.
18 Bank Street
Morristown, N.J. 07960

B. COMPENSATION AND TIME OF PERFORMANCE

1. The Contractor does hereby agree to furnish the services of its partners, associates and staff, whenever necessary and to the best of their ability in such manner as to serve the best interests of the City and perform the aforementioned professional legal services consistent with the method of payment set forth in "Schedule A".

2. The obligation of the City to make payment to the Contractor shall be limited to the funds appropriated and made available as set forth above.

C. CONTRACTOR'S INDEPENDENT STATUS

1. It is expressly understood and agreed that the status of the Contractor and its employees, agents, and officers shall be that of an independent contractor retained on a contractual basis to provide professional legal services for the limited time frame set forth above and it is not intended, nor shall it be construed, that the contractor or any of its employees, officers and/or agents is/are (an) employee(s) or officer(s) of the City of Bayonne for any purpose whatsoever.

D. NON-DISCRIMINATION

In accordance with N.J.A.C. 17:27-1 et seq., during the performance of this contract, contractor agrees as follows:

a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause.

b. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

c. The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or

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JOHN I. GELMAN

1. It is expressly agreed that this written agreement embodies the entire agreement of the parties in relation to the subject matter, and that no understandings or agreements, verbal or otherwise, in relation thereto, exists between the parties except as herein expressly set forth.

2. The contract documents shall include this signed agreement, together with the following:

| | YES | NO | N/A |
|-------------------------|-----|-----|-----|
| a. Schedule A | {X} | { } | { } |
| b. Addenda, if any | { } | { } | {X} |
| c. Request for Proposal | { } | { } | {X} |
| d. Specifications | { } | { } | {X} |
| e. General Conditions | { } | { } | {X} |

F. MODIFICATIONS

No change or modification of this contract shall be valid unless it shall be in writing, approved by the Municipal Council and signed by all parties.

G. SEVERABILITY CLAUSE

If it should appear that any of the terms of this Agreement are in conflict with any rule of law or statutory provision of this State, then such terms shall be deemed inoperative and null and void insofar as they are in conflict with such rule of law or statutory provision, and shall be deemed modified to conform to such rule of law.

H. EXCULPATORY CLAUSE

It is mutually understood and agreed that none of the parties hereto shall be held responsible for damages caused by delay or failure to perform hereunder, when such delay or failure is due to fires, strikes, acts of God, legal acts of the public authorities which cannot be reasonably forecast or provided against.

I. VALIDITY GOVERNED BY LAW OF NEW JERSEY

This agreement shall be subject to the provisions of the charter and revised municipal code of the City of Bayonne. Additionally, the validity of this contract shall be governed by the Laws of the State of New Jersey and any legal action arising out of this contract shall be commenced in the courts of the State of New Jersey. Furthermore, all parties to this agreement consent to the jurisdiction of the Superior Court of New Jersey, County of Hudson.

J. NOTICES

V:\PRODATA\LAN\Word 6.0\CONTRACT\2002\B01d02\AKK-2002\B01d02, Notice, Loadhold\10-21-02

DEC 11 2001

JON L. GELMAN

All notices given by either party to the other shall be delivered, in writing, as follows:

To the City of Bayonne: NANCY A. KIST
DIRECTOR OF LAW
630 AVENUE C
BAYONNE, NJ 07002
201-858-6035

To the Contractor: ROBERT E. LEVY, ESQ.
SCARINCI & HOLLENBECK, LLC
500 PLAZA DRIVE
BRCAUCUS, NJ 07096
201-392-8300

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DEC 11 2001

JON L. GELMAN

IN WITNESS WHEREOF, the Contractor has caused this agreement to be executed in its corporate name by its President, attested by its Secretary and its corporate seal to be hereunto affixed, the day and year first above written, and the City has caused this agreement to be executed in its corporate name by the Mayor, attested by the City Clerk, approved by the Law Department (as to form only), and its corporate seal to be hereunto affixed the day and year first above written.

LLC

Attest:

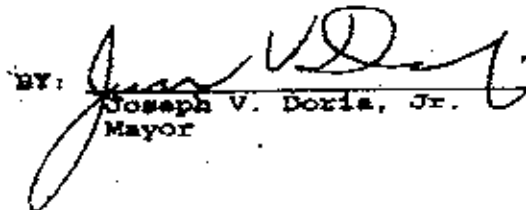
BY: _____

BY: _____

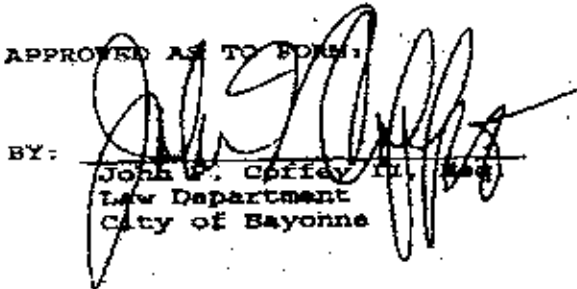
CITY OF BAYONNE

Attest:

BY: 
Robert P. Sloan
City Clerk

BY: 
Joseph V. Doria, Jr.
Mayor

APPROVED AS TO FORM:

BY: 
John P. Coffey III, Esq.
Law Department
City of Bayonne

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DEC 15 2001

JOHN I. GELMAN

SCHEDULE A

1. **SCOPE OF SERVICES:** The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract:

Provide legal counsel and related legal services to the City regarding the Institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include but not be limited to the following:

- a. Investigating the City's potential claims against lead manufacturers and/or providing legal representation to the City in a suit against the lead manufacturers, et al. The Corporation Counsel's Office will designate an attorney from its office to be assigned this case. The Corporation Counsel attorney may participate actively in the case, and will specify whether he or she should appear as a counsel of record. The correspondence from outside counsel to the City should be directed to this attorney.
- b. The extent of the Corporation Counsel attorney's involvement will vary. In some instances the attorneys will participate directly in pretrial and trial activities. Corporation Counsel legal assistants and support services may be used where feasible. The attorney and LLG should agree as early as possible on a division of efforts and then reassess that decision as the case unfolds. The goal should be to utilize City resources where available, consistent with the needs of the case.
- c. The City agrees to provide for the cooperation of all of its agencies with LLG for the purpose of the investigation and/or prosecution of the City's claim.

2. **SERVICES.**

COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the City shall pay a contingent fee to LLG out of any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected plus all costs and expenses incurred by the LLG in this matter. The City hereby further agrees to pay to the LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation. All remaining funds shall go to the City after payment of all expenses and costs incurred by the LLG in this matter.

- b. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the City and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for prosecution of this litigation.

3. TERMINATION

- a. It is further agreed that neither the LLG nor the City may, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase of fees to the City.

4. JURISDICTIONAL LANGUAGE:

It is agreed by and between the City and LLG that this retainer agreement and any dispute which may arise thereunder, shall be governed, controlled and interpreted using the laws of the State of New Jersey.

IN WITNESS WHEREOF, the City and the Lead Litigation Group have executed this Contract as of the date first herein written.

MUNICIPAL COUNCIL OF THE CITY OF BAYONNE

RESOLUTION NO. 01-10-24- 097

WHEREAS, lead poisoning has caused permanent and devastating health problems for the children of the City of Bayonne; and

WHEREAS, the problems and costs which lead poisoning causes to the citizens of the City of Bayonne are staggering; and

WHEREAS, the city, its taxpayers and other public entities are forced to bear additional costs as a result of lead poisoning; and

WHEREAS, the lead industry failed to take reasonable, responsible steps which would have prevented lead poisoning in the City of Bayonne; and

WHEREAS, the City of Bayonne has decided to take action by investigating to determine if there is a lead paint problem in municipal buildings and if there is then instituting suit against the lead industry; and

WHEREAS, the City of Bayonne wishes to retain the legal services of Ness, Motley, Loadholt, Richardson & Poole, 321 South Main Street, Providence Rhode Island 02940, as special counsel to the City and to act as counsel for the Lead Litigation Group; and

WHEREAS, this contract is awarded without public bidding, as a professional service exception to the Local Public Contracts Law as set forth in N.J.S.A. 40A: 11-5 (1)(a)(i); now, therefore be it

RESOLVED, by the Municipal Council of the City of Bayonne, New Jersey that:

1. The Mayor and City Clerk are hereby authorized to execute a contract with Ness, Motley, Loadholt, Richardson & Poole, 321 South Main Street, Providence Rhode Island 02940, on a contingency basis to be compensated in accordance with the New Jersey Court Rules.
2. It shall be the responsibility of Special Counsel to provide the Mayor and Council with periodic status reports as to legal services provided.
3. This contract is awarded as a professional service contract pursuant to N.J.S.A. 40A: 11-5(1)(a)(i).
4. A notice of this action shall be published in the newspaper as required by law within ten (10) days of its passage and a copy of the contract shall be kept in the office of the City Clerk.

JFC/emg

2 0000 0000 0000

Robert F. Slattery

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT, entered into this 27th day of December, 2001 BY
AND BETWEEN:

THE TOWNSHIP OF UNION, NEW JERSEY, a municipal corporation of the State of New Jersey with its principal place of business located at Municipal Building, Friberger Park, 1976 Morris Avenue, Union, New Jersey 07083 (hereinafter referred to as the "TOWNSHIP")

and

TOWNSHIP OF UNION LEAD LITIGATION GROUP, which is comprised of the firms of:

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
P. O. Box 934
Wayne, New Jersey 07474-0934

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

James J. Plaia, Esq.
10 South Prospect Street
Verona, New Jersey 07044

WITNESSETH THAT:

WHEREAS, the Township, desires to engage a committee of lawyers known as "Township of Union Lead Litigation Group" ("LLG") to render certain professional services in connection with matters pertaining to any and all claims which the Township has, or may have, against E.I. DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation, American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (the "Claim").

WHEREAS, the LLG desires to perform said services for the Township,

NOW THEREFORE,

for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the Township and the LLG covenant and agree as follows:

- **SCOPE OF SERVICES.** The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract:

Provide legal counsel and related legal services to the Township regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include but not be limited to the following:

1. investigating the Township's potential claims against lead manufacturers and/or providing legal representation to the Township in a suit against the lead manufacturers, et al. The Corporation Counsel's Office will designate an attorney from its office to be assigned this case. The Corporation Counsel attorney may participate actively in the case, and will specify whether he or she should appear as a counsel of record. The correspondence from outside counsel to the Township should be directed to this attorney.
2. The extent of the Corporation Counsel attorney's involvement will vary. In some instances the attorneys will participate directly in pretrial and trial activities. Corporation Counsel legal assistants and support services may be used where feasible. The attorney and LLG should agree as early as possible on a division of efforts and then reassess that decision as the case unfolds. The goal should be to utilize Township resources where available, consistent with the needs of the case.
3. The Township agrees to provide for the cooperation of all of its agencies with LLG for the purpose of the investigation and/or prosecution of the Township's claim.

2. SERVICES.

COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the Township shall pay a contingent fee to LLG out of

any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected plus all costs and expenses incurred by the LLG in this matter. The Township hereby further agrees to pay to the LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation. All remaining funds shall go to the Township after payment of all expenses and costs incurred by the LLG in this matter.

- b. In the event, and to the extent, that the Township is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the Township agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorneys fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the Township and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for prosecution of this litigation.

2. TERMINATION

- a. It is further agreed that neither the LLG nor the Township may, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the Township.

3. JURISDICTIONAL LANGUAGE:

It is agreed by and between the Township and LLG that this retainer agreement and any dispute which may arise thereunder, shall be governed, controlled and interpreted using the laws of the State of New Jersey.

IN WITNESS WHEREOF, the Township and the Lead Litigation Group have executed this Contract as of the date first herein written.

TOWNSHIP OF UNION

By: Thomas S. Plana
TOWNSHIP ATTORNEY

TOWNSHIP OF UNION LEAD
LITIGATION GROUP

By: _____

Michael P. Burakoff, Esq.
18 Bank Street
Morristown, N.J. 07960

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT, entered into this 8th day of November, 2001, BY AND BETWEEN:

THE CITY OF PASSAIC, NEW JERSEY, a municipal corporation of the State of New Jersey with its principal place of business located at City Hall, 330 Passaic Street, Passaic, New Jersey 07055 (hereinafter referred to as the "City") and

CITY OF PASSAIC LEAD LITIGATION GROUP, Ness, Motley, Loadholt, Richardson & Poole, PC, 321 South Main Street, Suite 402, Providence, Rhode Island 02903; Jon L. Gelman, Esq., 1450 Valley Road, P. O. Box 934, Wayne, New Jersey 07474-0934 and Michael P. Burakoff, P.A., 18 Bank Street, 4th Floor, Morristown, New Jersey 07960.

WITNESSETH THAT:

WHEREAS, the City, desires to engage a committee of lawyers known as "City of Passaic Lead Litigation Group" ("LLG") to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation, American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (the "Claim").

WHEREAS, the LLG desires to perform said services for the City.

NOW, THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenants and agree as follows:

1. **SCOPE OF SERVICES:** The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract

- a. Investigating the City's potential claims against lead manufacturers and/or providing legal representation to the City in a suit against the lead manufacturers, et als. The City Attorney's Office will designate an attorney from its office to be assigned this case. The City Attorney may participate actively in the case, along with the firm of Ness, Motley, and will specify whether he or she should appear as a counsel of record. The correspondence from outside counsel to the City should be directed to the City Council and City Attorney.

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- b. The extent of the City Attorney's involvement will vary. In some instances the attorneys will participate directly in pretrial and trial activities. City Attorney's legal assistants and support services may be used where feasible. The attorney and LLG should agree as early as possible on a division of efforts and then reassess that decision as the case unfolds. The goal should be to utilize City resources where available, consistent with the needs of the case.
- c. The City agrees to provide for the cooperation of all of its agencies with LLG for the purpose of the investigation and/or prosecution of the City's claim.

2. SERVICES.

COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the City shall pay a contingent fee to LLG out of any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected for the City plus all costs and expenses incurred by the LLG in this matter. The City hereby further agrees to pay to the LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, for the City, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation. All remaining funds shall go to the City after payment of all expenses and costs incurred by the LLG in this matter. LLG will use its best efforts to ensure that the City pays only its fair share of expert fees by spreading the costs of experts herein retained for the litigation, to the extent possible, among the other public entities that LLG is representing in other actions against the lead paint industry.
- b. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorneys' fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the City and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for

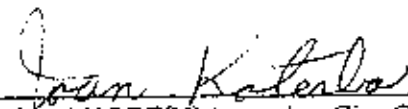
prosecution of this litigation. If the City does not prevail in its litigation, the City owes nothing to the LLG.

3. **TERMINATION:**

- a. It is further agreed that the LLG or City may not, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase fees to the City.

5. **JURISDICTIONAL LANGUAGE:** It is agreed by and between the City and LLG that this retainer agreement and any dispute which may arise thereunder, shall be governed, controlled and interpreted using the laws of the State of New Jersey.

IN WITNESS WHEREOF, the City and the Lead Litigation Group have executed this Contract as of this date first herein written.


JOAN KOTERBA, Acting City Clerk

Dated: 12/11/01

Dated: 12/5/01

Dated: 12/3/01

Dated: 12/3/01

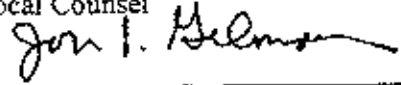
THE CITY OF PASSAIC


By: SAMUEL RIVERA, Mayor

CITY OF PASSAIC LEAD
LITIGATION GROUP


By: NESS, MOTLEY, LOADHOLT
RICHARDSON & POOLE

JON L. GELMAN, ESQ.
Local Counsel


By: JON L. GELMAN

MICHAEL P. BURAKOFF, P.A.
Local Counsel

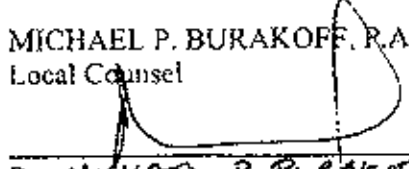

By: MICHAEL P. BURAKOFF, P.A.

EXHIBIT A

P.L.1975.C.127 (N.J.A.C. 17:27) MANDATORY AFFIRMATIVE ACTION LANGUAGE

PROCUREMENT, PROFESSIONAL AND SERVICES CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status or sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status or sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: Employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this non-discrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status or sex, affectional or sexual orientation.

The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contract or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status or sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personal testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal Law and applicable Federal Court decisions.

The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status or sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decision of the State of New Jersey, and applicable Federal Law and applicable Federal Court decision.

The contractor or subcontractor shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies, shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

CITY OF PASSAIC

RESOLUTION NO. 9022-01RESOLUTION AUTHORIZING PARTICIPATION
IN LEAD PAINT LITIGATION

WHEREAS, lead poisoning has caused permanent and devastating health problems for the children of the City of Passaic; and

WHEREAS, the problems and costs which lead poisoning causes to the citizens of the City of Passaic are staggering; and

WHEREAS, the City, its taxpayers, and other public entities are forced to bear additional costs as a result of lead poisoning; and

WHEREAS, the lead industry failed to take reasonable, responsible steps which would have prevented lead poisoning in the City of Passaic; and

WHEREAS, the City of Passaic has decided to take action by investigating to determine if there is a lead paint problem in municipal buildings and if there is then instituting suit against the lead industry; and

WHEREAS, the City of Passaic wishes to retain the legal services of Ness, Motley, Loadholt, Richardson & Poole as special counsel to the City and to act as counsel for the Lead Litigation Group; and

WHEREAS, this contract is awarded without public bidding, as a professional service exception to the Local Public Contracts Law as set forth in N.J.S.A. 40A:11-5(1)(a)(I).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PASSAIC, NEW JERSEY, THAT:

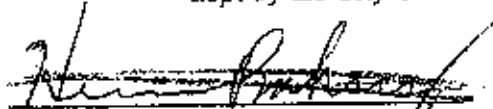
1. The Mayor and City Clerk are hereby authorized to execute a contract with Ness, Motley, Loadholt, Richardson & Poole on a contingency basis to be compensated in accordance with the contingency fee agreement set forth in the contract.
2. It shall be the responsibility of Special Counsel to provide the Mayor and Council with periodic status reports as to legal services provided.
3. This contract is awarded as a professional service contract pursuant to N.J.S.A. 40A:11-5(1)(a)(I).

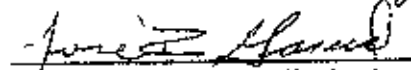
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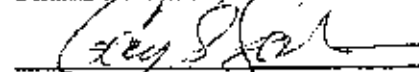
4. A Notice of this action shall be published in the newspaper, as required by law within ten (10) days of its passage and a copy of the contract shall be kept by the City Clerk.

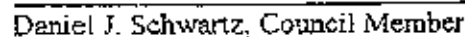

Herman Barkley, Council Member



Jose R. Garcia, Council Member

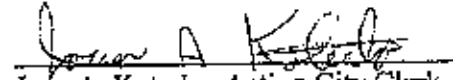

Marcellus T. Jackson, Council Member


Chairn McMunk, Council Member


Gary S. Schaer, Council Member


Daniel J. Schwartz, Council Member


Gerardo Fernandez
Council President


Joan A. Koterba, Acting City Clerk

Dated: November 8, 2001

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CITY OF SAN JOSE

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JOHN L. GELMAN

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT, entered into this 8 day of August, 2000
BY AND BETWEEN:

THE BOROUGH OF ROSELLE, NEW JERSEY, a municipal corporation of the State of New Jersey with its principal place of business located at 210 Chestnut Street, Roselle, New Jersey 07203 (hereinafter referred to as the "BOROUGH"),

and

BOROUGH OF ROSELLE LEAD LITIGATION GROUP, which is comprised of the firms of

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
P. O. Box 934
Wayne, New Jersey 07474-0934

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

James J. Plaia, Esq.
10 South Prospect Street
Verona, New Jersey 07044

WITNESSETH THAT:

WHEREAS, the Borough, desires to engage a committee of lawyers known as "Borough of Roselle Lead Litigation Group" ("LLG") to render certain professional services in connection with matters pertaining to any and all claims which the Borough has, or may have, against E.I. DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation, American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (the "Claim").

WHEREAS, the LLG desires to perform said services for the Borough,

NOW THEREFORE,

For the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the Borough and the LLG covenant and agree as follows:

1. **SCOPE OF SERVICES:** The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract:

Provide legal counsel and related legal services to the Borough regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include but not be limited to the following:

1. Investigating the Borough's potential claims against lead manufacturers and/or providing legal representation to the Borough in a suit against the lead manufacturers, et al. The Corporation Counsel's Office will designate an attorney from its office to be assigned this case. The Corporation Counsel attorney may participate actively in the case, and will specify whether he or she should appear as a counsel of record. The correspondence from outside counsel to the Borough should be directed to this attorney.
2. The extent of the Corporation Counsel attorney's involvement will vary. In some instances the attorneys will participate directly in pretrial and trial activities. Corporation Counsel legal assistants and support services may be used where feasible. The attorney and LLG should agree as early as possible on a division of efforts and then reassess that decision as the case unfolds. The goal should be to utilize Borough resources where available, consistent with the needs of the case.
3. The Borough agrees to provide for the cooperation of all of its agencies with LLG for the purpose of the investigation and/or prosecution of the Borough's claim.

2 SERVICES.

COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the Borough shall pay a contingent fee to LLG out of any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected plus all costs and expenses incurred by the LLG in this matter. The Borough hereby further agrees

to pay to the LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation. All remaining funds shall go to the Borough after payment of all expenses and costs incurred by the LLG in this matter.

- b. In the event, and to the extent, that the Borough is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the Borough agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the Borough and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for prosecution of this litigation.

3. TERMINATION

- a. It is further agreed that neither the LLG nor the Borough may, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the Borough.

4. JURISDICTIONAL LANGUAGE:

It is agreed by and between the Borough and LLG that this retainer agreement and any dispute which may arise thereunder, shall be governed, controlled and interpreted using the laws of the State of New Jersey.

IN WITNESS WHEREOF, the Borough and the Lead Litigation Group have executed this Contract as of the date first herein written.

BOROUGH OF ROSELLE

By: John P. Musi

*Roselle Borough
attorney*

BOROUGH OF ROSELLE LEAD
LITIGATION GROUP

By: [Signature]

Michael P. Burakoff, Esq.
18 Bank Street
Morristown, N.J. 07960

ORIGINAL**ENGAGEMENT AND CONTINGENCY AGREEMENT**

This AGREEMENT is made this ___ day of ___, 2001, in the City and County of San Francisco, State of California, by and between the City and County of San Francisco, the San Francisco Unified School District, and the San Francisco Housing Authority (hereinafter collectively referred to as "San Francisco") acting through San Francisco City Attorney Louise Renne, on the one hand, and the law firms of Thornton & Naumes, LLP and Ness, Motley, Loadholt, Richardson & Poole, and Wartnick, Chaber, Harowitz & Tigerman, on the other hand, retained for the purposes described herein as Special Assistant City Attorneys ("Special Attorneys").

Whereas, lead contamination is a significant public health problem, and manufacturers responsible for lead in paint have fraudulently concealed the dangers associated with lead and created a public and private nuisance in the City and County of San Francisco;

Whereas, the San Francisco City Attorney is in the process of initiating litigation ("the Litigation") against manufacturing companies responsible for lead in paint, and related entities, on behalf of the City and County of San Francisco, the San Francisco Unified School District, and the San Francisco Housing Authority, and on behalf of the People of the State of California, pursuant to her authority to protect the public under California Code of Civil Procedure section 731 and California Business and Professions Code section 17204;

Whereas, the Litigation and any other litigation involving lead and the manufacturers responsible for lead in paint is likely to entail numerous complex factual and legal issues;

Whereas, such Litigation will require the expenditure of substantial resources by any private attorneys retained to assist San Francisco; and

Whereas, the San Francisco City Attorney seeks to limit the expenditure of resources by San Francisco in such litigation;

NOW THEREFORE, the City and County of San Francisco, the San Francisco Unified School District, the San Francisco Housing Authority, and Special Attorneys AGREE AS FOLLOWS:

1. SCOPE OF SERVICES/CASE HANDLING

A. The Special Attorneys are retained to provide legal services to the San Francisco City Attorney for the purpose of seeking damages and injunctive and other relief, including restitution and disgorgement of profits but excluding any civil penalties, against lead and lead paint industry companies and related entities ("defendants") in the Litigation. The parties to this agreement acknowledge that the Special Attorneys may be retained to represent other government entities in similar litigation, including but not limited to in the Litigation.

B. The San Francisco City Attorney, as the chief legal officer of the City and County of San Francisco, who is charged with representing it in legal proceedings with respect to which it has an interest and who is authorized to bring certain actions on behalf of the People of the State of California, together with the county counsel and city attorneys of any other counties and cities that join in the prosecution of the Litigation and retain Special Attorneys ("the Prosecuting Entities"), retain final authority over all aspects of the Litigation.

C. As provided herein, the Special Attorneys are authorized to take appropriate legal steps to prosecute the Litigation as it pertains to liability, injunctive relief and restitution/disgorgement of profits and participate in any settlement negotiations. The San Francisco City Attorney shall designate a member or members of her staff to monitor, review and participate as counsel in the prosecution of all aspects of the Litigation and to prosecute the Litigation as it pertains to any civil penalties. The Special Attorneys shall consult in advance with, and obtain the prior approval of, the San Francisco City Attorney concerning all substantive matters related to the Litigation, including, but not limited to, the pleadings and dispositive motions, discovery, selection of consultants and experts, and whether the Special Attorneys may represent additional co-plaintiffs in the Litigation. Regular status meetings shall be held as requested by either the San Francisco City Attorney or the Special Attorneys.

D. The Special Attorneys shall provide the San Francisco City Attorney with copies of all pleadings, discovery requests and responses, and relevant correspondence related to the Litigation.

E. The Special Attorneys shall communicate with the departments and employees of San Francisco through the San Francisco City Attorney's Office, unless alternative arrangements are made in advance among the Special Attorneys, the San Francisco City Attorney and the department(s).

F. The Special Attorneys shall provide sufficient resources, including attorney time and capital for payment of expenses, to prosecute the Litigation faithfully and with due diligence. Legal services under this Agreement shall be performed only by competent personnel under the supervision and in the employment of Special Attorneys or retained by Special Attorneys as consultants with the prior approval of the San Francisco City Attorney.

G. The San Francisco City Attorney retains the right to add firms as additional Special Attorneys in this Litigation, with the consent of the existing Special Attorneys, which consent shall not unreasonably be withheld. Any such additional Special Attorneys will share in such compensation, if any, as is provided to Special Attorneys pursuant to Section II of this Agreement. In the event that the Special Attorneys are unable to agree on the terms under which the new firms shall share in the compensation under this Agreement, the San Francisco City Attorney shall decide and such decision shall be final and binding on all the Special Attorneys. In addition, the San Francisco City Attorney retains the right to add as many attorneys and firms as she chooses who agree to participate on a pro bono publico basis, without sharing in the percentages of any recovery provided in Section II.C., below, or seeking court-awarded fees payable from the recovery of damages or penalties, e.g., under a common fund theory. However, such pro bono counsel shall be eligible on the same basis as the Special Attorneys to recover their reasonable disbursements as provided under Section II.B. and Section II.C., below, and may seek court-awarded fees payable by defendants in addition to any recovery.

H. The San Francisco City Attorney may determine to appoint an Executive Committee to oversee the day-to-day conduct of the Litigation. The Executive Committee shall include: the San Francisco City Attorney or her designee, Neil T. Leifer, Esq. (or designee), John J. McConnell, Jr., Esq. (or designee), Harry F. Wartnick, Esq. (or designee); and any additional members that the San Francisco City Attorney designates.

I. The San Francisco City Attorney retains the right to designate lead counsel and lead trial counsel on behalf of San Francisco in the Litigation on the claims for injunctive relief and restitution/d disgorgement of profits. The San Francisco City Attorney and any other City Attorneys and County Counsel who are authorized to seek civil penalties shall prosecute the Litigation as it pertains to any civil penalties.

J. The Special Attorneys shall submit quarterly reports to the San Francisco City Attorney's Office setting forth for the work performed and the expenses incurred in the Litigation in the proceeding quarter. Where disbursements are made or expenses are incurred by Special Attorneys which also benefit other clients of Special Attorneys in other, similar litigation, only the portion of such disbursements fairly and properly allocable to plaintiffs in the Litigation shall be claimed as reasonable expenses of prosecuting the Litigation.

K. Audit and Inspection: The Special Attorneys agree to maintain and make available to the San Francisco City Attorney accurate books and accounting records relative to their activities under this Agreement. The Special Attorneys will permit the San Francisco City Attorney to audit, examine and make excerpts and transcripts from such time and expense records, payrolls, records of personnel and other documents and data related to in whole or in part matters covered by this Agreement. The Special Attorneys shall maintain such data and records in an accessible location and condition for a period of no less than one (1) year after final payment under this Agreement.

II. CONTINGENT FEE AGREEMENT

A. The Special Attorneys agree to advance all out of pocket litigation costs approved by the Executive Committee and reasonably incurred by the City and County of San Francisco or Special Attorneys in the Litigation. Except as provided in the remaining paragraphs of this Section II (B, C, D, E, F and G), San Francisco is not liable to pay any of the expenses of the Litigation, whether such expenses are attorneys' fees, costs or other amounts, except for any costs or fees that may be awarded to defendants as prevailing parties. The repayment of any additional costs and other expenses is contingent upon a recovery being obtained. If no recovery is obtained, San Francisco will owe nothing for costs and other expenses.

B. The sole contingency upon which San Francisco shall pay compensation to the Special Attorneys is the recovery and collection by the Special Attorneys on behalf of San Francisco of moneys other than civil penalties in the Litigation, whether by settlement or judgment.

C. Compensation on the foregoing contingency shall be the Special Attorneys' reasonable disbursements in the Litigation, plus 17% of any recovery, excluding all civil penalties collected pursuant to California Business and Professions Code section 17206, collected by the Special Attorneys in this Litigation in excess of the reasonable disbursements of Special Attorneys, provided that if any additional entities become plaintiffs in this litigation represented by Special Attorneys, such percentages shall apply to the aggregate recoveries, exclusive of civil penalties, on behalf of all such plaintiffs. As used in this paragraph, the term "recovery" shall not include amounts awarded or ordered to be paid as attorneys' fees and costs. If the Special Attorneys recover moneys in the Litigation, but in an amount that does not exceed the disbursements in the Litigation, such moneys shall be used to reimburse disbursements. In no event shall Special Attorneys share in any recovery of civil penalties.

D. Notwithstanding paragraph II.C. above, San Francisco shall pay no higher percentage for compensation of the Special Attorneys than is paid by any other co-

plaintiff that the Special Attorneys represent in the Litigation or any other local government entity that the Special Attorneys represent on a contingent fee basis in similar litigation.

E. As used in this Agreement, the term "disbursements" shall include reasonable travel expenses and any other expenditures reasonably incurred in the Litigation. Reasonable costs do not include mark-ups above actual costs, meals not connected with travel or costs of transportation between Special Attorneys' residences and offices or disbursements for travel expenses and accommodations that exceed the usual and customary business rate charged in the locality where such expenses are incurred.

F. The Prosecuting Cities and Counties intend to seek an order for payment of their attorneys' fees and costs should they prevail, in whole or in part, in the Litigation. If any Court in the Litigation awards attorneys' fees, such fees shall be paid to the Special Attorneys to the extent that the award is based on services furnished by the Special Attorneys; provided that, to the extent that such fees come from the recovery, e.g., under a common fund theory, Special Attorneys shall not receive any greater payment than they are entitled to under Sections II.C. and II.D., above. However, any attorneys' fees that are awarded by the Court for Special Attorneys' services and collected in the Litigation shall be deducted from any fees payable to the Special Attorneys pursuant to this Section II, paragraphs B, C and D, above. If the Court awards expenses and costs in the Litigation, such amount shall be applied as directed in this Agreement. The San Francisco City Attorney and the Special Attorneys are aware that defendants in similar litigation have previously challenged and sought to invalidate contingency fee arrangements between public entities and outside counsel. The San Francisco City Attorney and the Special Attorneys believe that any such challenges to this Agreement lack merit and that this contingent fee arrangement is valid. However, in the event that this contingent fee arrangement is found to be invalid, the Special Attorneys agree to continue to represent San Francisco and advance expenses with the understanding that Special Attorneys will be paid only such attorneys' fees and expenses as are awarded for their services by the Court or recovered as reasonable fees and expenses for their services. San Francisco agrees to use its best efforts to support any application for such fees and expenses made pursuant to this paragraph.

G. In the event that the Litigation is resolved by settlement under terms involving the provision of goods, services or any other "in-kind" payment, the San Francisco City Attorney agrees to seek, as part of any such settlement, a mutually agreeable monetary settlement of attorneys fees and expenses. The San Francisco City Attorney agrees to consult with the Special Attorneys prior to making a recommendation to the Board of Supervisors or other public agencies regarding settlement or dismissal of legal proceedings.

H. Special Attorneys agree to use their best efforts together with San Francisco to recover Special Attorneys' fees from defendants rather than from any of San Francisco's recovery. Should any nationwide resolution of lead litigation, which includes this Litigation, provide for a fund to compensate plaintiffs' counsel, such as Special Attorneys, for the services rendered on behalf of San Francisco and that furthered the overall litigation efforts against the leads industry, in addition to using their best efforts to recover fees from the defendants, Special Attorneys also agree to use their best efforts to obtain their attorneys fees from that fund rather than from San Francisco's recovery. San Francisco agrees to use its best efforts to support Special Attorneys' application for fees from any such fund. Any attorneys' fees that are recovered by Special Attorneys from such a fund for services provided by Special Attorneys to San Francisco shall be deducted from any fees payable to the Special Attorneys pursuant

F. Commercial General Liability and Business Automobile Liability Insurance policies shall be endorsed to provide the following:

Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.

G. ALL POLICIES SHALL BE ENDORSED TO PROVIDE:

Thirty (30) days advance written notice to the City and County of San Francisco of cancellation, non-renewal or reduction in coverage.

H. Certificates of insurance, satisfactory to the City and County of San Francisco, evidencing all coverages above shall be furnished to the City and County of San Francisco, with complete copies of policies upon the City and County of San Francisco's request.

1. Approval of the insurance by the City and County of San Francisco shall not relieve or decrease the liability of the Special Attorneys.

1. Indemnity: The Special Attorneys shall take full responsibility for their work and shall bear all losses and damages directly resulting from it if the result of professional malpractice. The Special Attorneys shall assume the defense of, indemnify and hold harmless San Francisco and its officers, representatives, agents and employees from all claims, loss, damage, injury, and liability of every kind, nature and description caused by the willful and intentional misconduct or negligence of the Special Attorneys. Such negligence shall include, but not be limited to, any negligence of the Special Attorneys in connection with acts, errors or omissions by the Special Attorneys' agents, employees or subcontractors arising out of performance under, or any action taken in furtherance of, this Agreement. Nothing in this paragraph shall limit any right or remedy otherwise available to San Francisco under law. It is understood and agreed that the indemnification provided above shall not apply to the extent of any negligence of San Francisco and its officers, representatives, agents and employees.

K. Liability of San Francisco: San Francisco's obligations under this contract shall be limited to the payment of the compensation provided for in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall San Francisco be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

L. During the term of this Agreement, the Special Attorneys shall promptly provide a statement describing any criminal investigation relating to, or material litigation asserted against, the Special Attorneys' firm or members of the firm.

M. Each California Special Attorney firm shall certify in writing, under penalty of perjury, that the firm has fully complied with the laws of the California and the City and County of San Francisco, if applicable, relating to payment of taxes.

N. The Special Attorneys shall list and describe any litigation or representation ever undertaken by their firm or its members on behalf of any member of the lead industry.

O. Conflicts of Interest: The Special Attorneys shall avoid conflicts of interest and shall comply with all applicable professional conduct standards. The Special Attorneys shall not represent a party involved in a claim, dispute or transaction of any kind which would create a conflict of interest for counsel or the San Francisco City Attorney unless and until the Special Attorneys have informed the San Francisco City Attorney of the proposed representation and received her written approval to proceed. Special Attorneys state that they are familiar with provisions of Section 87100 et seq. of the Government Code of the State of California, and certify that they do not know of any facts which constitute a violation of those sections.

P. Termination:

1. Without Cause: The San Francisco City Attorney may terminate this Agreement as to any Special Attorneys, without cause and without penalty, by providing the Special Attorneys with written notice of termination delivered to it at least fourteen (14) calendar days before the effective date of termination.

2. For Cause: If any Special Attorneys breach any material term or condition of this Agreement, or fails to perform or fulfill any material obligation required by this Agreement, then the San Francisco City Attorney may give notice to the Special Attorneys of her intent to terminate or suspend those Special Attorneys by providing at least seven (7) calendar days written notice of an intent to terminate or suspend. If the Special Attorneys do not substantially cure or correct such breach or failure to perform or fulfill any material obligation within seven (7) calendar days after receipt of such written notice from the San Francisco City Attorney, or within such longer period as the San Francisco City Attorney might prescribe in writing, then the San Francisco City Attorney may thereafter terminate the Special Attorneys or suspend the Special Attorneys. In any event, the San Francisco City Attorney reserves the right to terminate immediately any Special Attorneys who are (a) disbarred or suspended in any jurisdiction, (b) indicted by a grand jury, or (c) convicted of a felony.

3. Consequences of Termination: If any Special Attorneys are terminated for cause, such Special Attorneys shall not be entitled to share in any contingency fee under this Agreement, but shall be entitled to be reimbursed for reasonable out-of-pocket costs that they incurred, but only if and to the extent and at the time such amounts would otherwise be payable pursuant to Section II, above. If any Special Attorneys are terminated for reasons other than "cause", such Special Attorneys shall be entitled (1) to be reimbursed for reasonable out-of-pocket costs that they incurred, but only if and to the extent and at the time such amounts would otherwise be payable pursuant to Section II, above, and (2) to be paid such compensation as might be payable to them in accordance with this Agreement and any fee sharing arrangement among them and any additional Special Attorneys, but only if, and to the extent and at the time, compensation is payable to the Special Attorneys from any recovery in the Litigation pursuant to Section II of this Agreement.

Q. Confidentiality: The Special Attorneys understand and agree that, in the performance of this Agreement, the Special Attorneys may have access to private or confidential information, including confidential patient medical information and confidential governmental information, which may be owned or controlled by San Francisco or any officer or employee thereof and that such information may contain proprietary or confidential details, whose disclosure to third parties may be damaging to

San Francisco or prohibited by law. The Special Attorneys agree that such information shall be held in confidence and used only in performance of the Agreement and shall not be furnished to others by Special Attorneys except as authorized by the San Francisco City Attorney or as required by law.

R. Notice to the Parties: All notices and copies of documents to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered as follows:

TO THE CITY ATTORNEY:

LOUISE H. RENNE
City Attorney
City and County of San Francisco
1 Carlton B. Goodlett Place, Ste. 234
San Francisco, CA 94102

TO SPECIAL ATTORNEYS:

Thornton & Naumes, LLP
100 Summer Street, 30th Floor
Boston, Massachusetts 02110
Attention: Neil T. Leifer

Ness, Motley, Loadholt, Richardson,
& Poole
P.O. Box 6067
321 South Main Street
Providence, Rhode Island 02940-6067
Attention: John J. McConnell, Jr.,

Wartnick, Chaber, Harowitz &
Tigerman
101 California Street, Suite 2200
San Francisco, CA 94111-5802
Attention: Harry F. Wartnick

S. Forum and Choice of Law: Any actions arising out of this Agreement shall be governed by the laws of California, and shall be brought and maintained in San Francisco Superior Court, which shall have exclusive jurisdiction thereof.

T. If any provision of the Agreement is found to be illegal, unenforceable, or void, then the parties shall be relieved of all obligations under that provision, provided, however, that the remainder of the Agreement shall be enforced to the fullest extent permitted by law. The headings used herein are for reference and convenience only and shall not be a factor in the interpretation of this Litigation.

U. This Agreement may not be modified, nor may compliance with its terms be waived, except by written instrument executed and approved by the San Francisco City Attorney or his/her designee and by authorized representatives of all parties to be bound or affected thereby.

V. Entire Agreement: This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

IN WITNESS WHEREOF, the San Francisco City Attorney and the Special Attorneys have executed this Agreement on the day and year first written above.

Dated: _____, 2001

City and County of San Francisco.

LOUISE H. RENNE
City Attorney

Dated: _____, 2001

San Francisco Unified School District.

Dated: _____, 2001

San Francisco Housing Authority

SPECIAL ATTORNEYS:

Dated: _____, 2001

Neil T. Leifer, Esq.
Individually and on behalf of
Thornton & Naumes, LLP

Dated: _____, 2001

John J. McConnell, Jr., Esq.
Individually and on behalf of
Ness, Motley, Loadholt, Richardson,
& Poole, LLP

Dated: _____, 2001

Harry F. Wartnick, Esq.
Individually and on behalf of
Wartnick, Chaber, Harowitz &
Tigerman

V. Entire Agreement: This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

IN WITNESS WHEREOF, the San Francisco City Attorney and the Special Attorneys have executed this Agreement on the day and year first written above.

Dated: 3/27/01, 2001

City and County of San Francisco.

2. H. R.

V. Entire Agreement: This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

IN WITNESS WHEREOF, the San Francisco City Attorney and the Special Attorneys have executed this Agreement on the day and year first written above.

Dated: _____, 2001

City and County of San Francisco.

LOUISE H. RENNE
City Attorney

Dated: _____, 2001

San Francisco Unified School District.

Dated: _____, 2001

San Francisco Housing Authority

SPECIAL ATTORNEYS:

Dated: 01/22, 2001

Neil T. Leiter, Esq.
Individually and on behalf of
Thornton & Naumes, LLP

Dated: _____, 2001

John J. McConnell, Jr., Esq.
Individually and on behalf of
Ness, Motley, Loadholt, Richardson,
& Poole, LLP

Dated: _____, 2001

Harry F. Wartnick, Esq.
Individually and on behalf of
Wartnick, Chaber, Harowitz &
Tigerman

CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into this 30th day of March 2007, as
authorized by Athens City Council Resolution ORDINANCE 0-28-07 & 0-35-07 and by and between the City of
Athens ("City"), and The City of Athens Lead Litigation Group, which is comprised
of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

John J. McConnell, Jr., Esq.
Morley Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

John P. Kennedy, Esq.
George R. McCue III, Esq.
Crabbe, Brown & James
500 S. Front St., Ste. 1200
Columbus, Ohio 43215

Steven A. Davis, Esq.
Crabbe, Brown & James
111 S. Broad St., Ste. 209
Lancaster, OH 43130

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq. Ste. 1600
Cleveland, OH 44113

WHEREAS, the City desires to engage these attorneys and law firms, to be
known as the City of Athens Litigation Group ("LLG"), to render certain professional

services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., Millennium Holdings LLC(successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Athens (the "Claims").

WHEREAS, the LLG desires to perform said service for the City.

NOW THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

SCOPE OF SERVICES

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing legal representation to the City in a suit against the Lead Manufacturers.

The City Director of Law will designate an attorney from his office to monitor the case and be a liaison between the LLG, the City Law Director's Office and City departments and offices. The City agrees to cooperate with LLG for the purpose of investigation and/or prosecution of the City's claim. Motley Rice LLC is designated as lead counsel on behalf of the LLG and Andrew S. Lipton of Lipton Law, LLC will be the liaison between the LLG and the City Law Director's Office.

II. TERMS

A. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this Contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by this Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City. The LLG may hire expert witnesses or other law firms, with the City's consent, to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or organization by the LLG without the prior approval of the City, nor be subject to any public records law, unless the information consists of public records under Ohio Law.

C. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of the services pursuant to this Contract shall become the City's property.

D. The City may, from time to time, request changes in the scope of services to be performed by the LLG. No such change, including an increase or decrease in the

amount of compensation, which may be mutually agreed upon by the City and the LLG shall be effective or enforceable until a written amendment to this Contract has been executed by both parties and such modification has been authorized by ordinance, if required.

E. If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least fifteen (15) days after the date such notice is provided. Such notice should be provided to the LLG in writing to Andrew S. Lipton, Lipton Law, LLC, 316 North Michigan Avenue, Suite 800, Toledo, OH 43604, and notice to the City shall be provided to the Law Director, 8 East Washington Street, Athens, Ohio 45701.

F. The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay, a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the gross amount of money collected from the settlement. The LLG will then be reimbursed for any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. All remaining funds shall go to the City. In the event this matter goes to trial against any Lead Manufacturer, then the LLG shall be entitled to a contingent fee of 33 1/3% of the gross amount of money collected and reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. If there is no settlement or verdict in favor of the City, the city shall not be responsible for payment of any costs or expenses advanced by the

LLG.

G. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief or based upon reasonable time and rates incurred by the LLG.

H. The LLG agrees to follow and be bound by all provisions and terms of the Equal Opportunity Clause, which is made a part hereof, and is incorporated herein as required by the Athens City Code.

I. The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City of Athens or its various departments, where such representation is in direct conflict with the services being rendered hereunder.

J. The LLG agrees to pay the City of Athens any such Athens City income tax resulting from work performed in the City of Athens pursuant to this contract as may be required by the Athens City Code.

K. It is further agreed by and between the City and the LLG that this Contract and any dispute that may arise hereunder, shall be governed, controlled and interpreted using the laws of the State of Ohio and such disputes shall be brought in the Athens County Court of Common Pleas.

L. The LLG agrees to indemnify and hold harmless the City of Athens from

any and all liability, damages, expenses and attorney fees that may arise or result from the services performed by the LLG in pursuit of claims against the lead pigment defendants. This obligation to indemnify and hold harmless includes but is not limited to Rule 11 sanctions for frivolous conduct ordered by any court of law.

IN WITNESS WHEREOF, the parties hereto hereby set their hands this 28th day of March, 2007.

City of Athens Litigation Group


CITY OF ATHENS, OHIO

Andrew S. Lipton, Esq.


GARRY E. HUNTER
Athens Director of Law

John P. Kennedy, Esq.

Steven A. Davis, Esq.


John J. McConnell, Jr., Esq.

Jon L. Gelman, Esq.

Michael J. O'Shea, Esq.

CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into this _____ day of _____ 2006, as authorized by Canton City Council Resolution 100, and by and between the City Attorney, City of Canton ("City"), and The City of Canton Lead Litigation Group, which is comprised of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

John J. McConnell, Jr., Esq.
Mofley Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

John P. Kennedy, Esq.
George R. McCue III, Esq.
Crabbe, Brown & James
500 S. Front St., Ste. 1200
Columbus, Ohio 43215

Samuel J. Ferruccio, Jr., LPA
220 Market Ave. South, Ste. 400
Canton, OH 44702-2181

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq. Ste. 1600
Cleveland, OH 44113

WHEREAS, the City desires to engage these attorneys and law firms, to be known as the City of Canton Litigation Group ("LLG"), to render certain professional

services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., Millennium Holdings LLC(successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Canton (the "Claims"). The Harrison Paint Co. of Canton, Ohio will not be named as a defendant by the City or the LLG.

WHEREAS, the LLG desires to perform said service for the City.

NOW THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

I. SCOPE OF SERVICES

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing legal representation to the City in a suit against the Lead Manufacturers.

The City Law Director will designate an attorney from his office to monitor the case and be a liaison between the LLG, the City Law Director's Office and City departments and offices. The City agrees to cooperate with any reasonable request of the LLG for the purpose of investigation and/or prosecution of the City's claim. Motley Rice LLC is

designated as lead counsel on behalf of the LLG and Andrew S. Lipton of Lipton Law, LLC will be the liaison between the LLG and the Law Director's Office.

II. TERMS

A. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this Contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by this Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City. The LLG may hire expert witnesses or other law firms, with the City's consent, to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or organization by the LLG without the prior approval of the City, nor be subject to any public records law, unless the information or records independently consist of or exist as public records according to Ohio law.

C. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of the services pursuant to this Contract shall become the City's property.

D. The City may, from time to time, request changes in the scope of services to be performed by the LLG. No such change, including an increase or decrease in the amount of compensation, which may be mutually agreed upon by the City and the LLG shall be effective or enforceable until a written amendment to this Contract has been executed by both parties and such modification has been authorized by ordinance, if required.

E. If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least fifteen (15) days after the date such notice is provided. Such notice should be provided to the LLG in writing to Andrew S. Lipton, Lipton Law, LLC, 316 North Michigan Avenue, Suite 800, Toledo, OH 43604, and notice to the City shall be provided to the Law Director, Canton City Hall-7th Floor, 218 Cleveland Avenue S.W., Canton, Ohio 44702.

F. The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay, a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the gross amount of money collected from the settlement. The LLG will then be reimbursed for any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. All remaining funds shall go the City. In the event this matter goes to trial against any Lead Manufacturer, then the LLG shall be entitled to a contingent fee of 33 1/3% of the gross amount of money collected and reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the

City's behalf. The City shall not be responsible for any costs or expenses should there be no settlement or successful verdict in its favor. The City shall have final settlement authority, which it shall exercise in good faith.

G. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best legal efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief or based upon reasonable time and rates incurred and documented by the LLG.

H. The LLG agrees to follow and be bound by all provisions and terms of the Equal Opportunity Clause, which is made a part hereof, and is incorporated herein as required by Chapter 507 of the Codified Ordinances of the City of Canton.

I. The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City of Canton or its various departments, where such representation is in direct conflict with the services being rendered hereunder.

J. The LLG agrees to pay the City of Canton any such Canton City income tax resulting from work performed in the City of Canton pursuant to this contract as may be required by Chapter 181 of the Codified Ordinances of the City of Canton.

K. The LLG agrees to indemnify and hold harmless the City of Canton from any and all liability, damages, expenses and attorney fees that may arise or result from the services performed by the LLG in pursuit of claims against the lead pigment defendants.

This obligation to indemnify and hold harmless includes but is not limited to Rule 11 sanctions for frivolous conduct ordered by any court of law.

L. It is further agreed by and between the City and the LLG that this Contract and any dispute that may arise hereunder, shall be governed, controlled and interpreted using the laws of the State of Ohio and such disputes shall be brought in the Stark County Court of Common Pleas.

IN WITNESS WHEREOF, the parties hereto hereby set their hands this 22 day of December, 2006.

City of Canton Litigation Group

CITY OF CANTON, OHIO

Andrew S. Lipton, Esq.

Joseph Martuccio
Joseph Martuccio
Canton Law Director

John P. Kennedy, Esq.

Samuel J. Ferruccio, Jr.

John J. McConnell, Jr., Esq.

J. H.

CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into this _____ day of _____ 2007, as authorized by Massillon City Council Resolution 1-7000 and by and between the City of Massillon ("City"), and The City of Massillon Lead Litigation Group, which is comprised of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

John J. McConnell, Jr., Esq.
Mottey Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

John P. Kennedy, Esq.
George R. McCue III, Esq.
Crabbe, Brown & James
500 S. Front St., Ste. 1200
Columbus, Ohio 43215

Samuel J. Ferruccio, Jr., LPA
220 Market Ave. South, Ste. 400
Canton, OH 44702-2181

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq. Ste. 1600
Cleveland, OH 44113

WHEREAS, the City desires to engage these attorneys and law firms, to be known as the City of Massillon Litigation Group ("LLG"), to render certain professional

services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., Millennium Holdings LLC (successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Massillon (the "Claims").

WHEREAS, the LLG desires to perform said service for the City.

NOW THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

I. SCOPE OF SERVICES

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing legal representation to the City in a suit against the Lead Manufacturers.

The City Director of Law will designate an attorney from his office to monitor the case and be a liaison between the LLG, the City Law Director's Office and City departments and offices. The City agrees to cooperate with LLG for the purpose of investigation and/or prosecution of the City's claim. Motley Rice LLC is designated as lead counsel on behalf of the LLG and Andrew S. Lipton of Lipton Law, LLC will be the liaison between the LLG and the City Law Director's Office.

II. TERMS

A. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this Contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by this Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City. The LLG may hire expert witnesses or other law firms, with the City's consent, to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or organization by the LLG without the prior approval of the City, nor be subject to any public records law, unless the information consists of public records under Ohio Law.

C. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of the services pursuant to this Contract shall become the City's property.

D. The City may, from time to time, request changes in the scope of services to be performed by the LLG. No such change, including an increase or decrease in the amount of compensation, which may be mutually agreed upon by the City and the LLG shall be

effective or enforceable until a written amendment to this Contract has been executed by both parties and such modification has been authorized by ordinance, if required.

E. If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least fifteen (15) days after the date such notice is provided. Such notice should be provided to the LLG in writing to Andrew S. Lipton, Lipton Law, LLC, 316 North Michigan Avenue, Suite 800, Toledo, OH 43604, and notice to the City shall be provided to the Law Director, Municipal Government Center, Upper Level, One James Duncan Plaza, S.E., Massillon, OH 44646.

F. The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay, a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the gross amount of money collected from the settlement. The LLG will then be reimbursed for any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. All remaining funds shall go the City. In the event this matter goes to trial against any Lead Manufacturer, then the LLG shall be entitled to a contingent fee of 33 1/3% of the gross amount of money collected and reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. If there is no settlement or verdict in favor of the City, the city shall not be responsible for payment of any costs or expenses advanced by the LLG.

G. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief or based upon reasonable time and rates incurred by the LLG.

H. The LLG agrees to follow and be bound by all provisions and terms of the Equal Opportunity Clause, which is made a part hereof, and is incorporated herein as required by the Massillon City Code.

I. The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City of Massillon or its various departments, where such representation is in direct conflict with the services being rendered hereunder.

J. The LLG agrees to pay the City of Massillon any such Massillon City income tax resulting from work performed in the City of Massillon pursuant to this contract as may be required by Chapter 181, Massillon City Code.

K. It is further agreed by and between the City and the LLG that this Contract and any dispute that may arise hereunder, shall be governed, controlled and interpreted using the laws of the State of Ohio and such disputes shall be brought in the Stark County Court of Common Pleas.

L. The LLG agrees to indemnify and hold harmless the City of Massillon from any and all liability, damages, expenses and attorney fees that may arise or result from the services performed by the LLG in pursuit of claims against the lead pigment defendants.

This obligation to indemnify and hold harmless includes but is not limited to Rule 11 sanctions for frivolous conduct ordered by any court of law.

IN WITNESS WHEREOF, the parties hereto hereby set their hands this _____ day of _____, 2007.

City of Massillon Litigation Group

CITY OF MASSILLON, OHIO

Andrew S. Lipton, Esq.

Pericles G. Stergios
Massillon Director of Law

John P. Kennedy, Esq.

Samuel J. Ferruccio, Jr.

John J. McConnell, Jr., Esq.

Jon L. Gelman, Esq.

Michael J. O'Shea, Esq.

CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into this 17 day of MAY 2007, is to clarify and to be substituted for the previous contract dated on or about September 22nd 2006 entered into as authorized by Columbus City Council Ordinance 1304-2006, and by and between the City Attorney, City of Columbus ("City"), and The City of Columbus Lead Litigation Group ("LLG").

Whereas, the City desires to engage these attorneys and law firms, to be known as the City of Columbus Litigation Group ("LLG"), to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., Millennium Holdings LLC (successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Columbus (the "Claims").

Whereas, the LLG has extensive knowledge, experience and expertise in the areas of law necessary to render such services; and

Whereas, the LLG desires to perform said services for the City; and

Whereas, the LLG, by reason of training, knowledge, reputation and experience, particularly in providing expert legal services concerning matters regarding environmental law and well field protection, is uniquely qualified to provide such professional, noncompetitive service to the City;

Now Therefore, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

1. **Scope of Services**

The LLG agrees to perform and carry out in a manner satisfactory to the City Attorney the following services:

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing

legal representation to the City in a suit against the Lead Manufacturers as requested by the City Attorney. This shall include advice, assistance, administrative hearings, litigation, negotiation of any agreements or settlements or other activities as requested by the City Attorney or his designees relating to the Claims, including the defense of any claim or complaint brought by the Lead Manufacturers as requested by the City Attorney or his/her designees.

The LLG's services will be coordinated with the City Attorney.

The LLG hereby agrees that the City Attorney retains the sole authority to authorize any settlement of any claim or complaint made or defended on behalf of the City of Columbus. Motley Rice LLC is designated as lead counsel on behalf of the LLG and will be the liaison between the LLG and the City Attorney's Office.

II. Terms

A. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by the Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City Attorney and the City. The LLG may hire expert witnesses or other law firms, with the City's consent to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or organization by the LLG without the prior approval of the City, nor be subject to any public records law.

C. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of this services pursuant to this Contract shall become the City's property.

D. The City may, from time to time, request changes in the scope of services to be performed by the LLG. No such change, including an increase or decrease in the amount of compensation, which may be mutually agreed upon by the city and the LLG shall be effective or enforceable until a written amendment to this contract has been executed by both parties and such modification has been authorized by ordinance, if required.

E. If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least fifteen (15) days after the date such notice is provided. Such notice should be provided to the LLG in writing at the Toledo, Ohio law office of Andrew S. Litpon, and notice to the City shall be provided to the City Attorney, 90 West Broad Street, Columbus, Ohio 43215.

F. The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the net amount of money collected from the settlement. The net amount will be determined by subtracting from each sum of settlement money collected any reasonable litigation expenses and court costs paid by the LLG for on the City's behalf for which the City shall reimburse the LLG from the settlement funds. All remaining funds shall go to the City. In the event this matter goes to trial against any Lead Manufacturer, the then LLG shall be entitled to a contingent fee of 33 1/3% of the net amount of money collected and reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the City's behalf.

G. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgement) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent with the percentage fees set out herein above for the monetary portion of any relief or based upon reasonable time and rates incurred by the LLG.

H. The LLG agrees to follow and be bound by all provisions and terms of the Equal Opportunity Clause, which is made a part hereof, and its incorporated herein required by Section 3909.01, Columbus City Code.

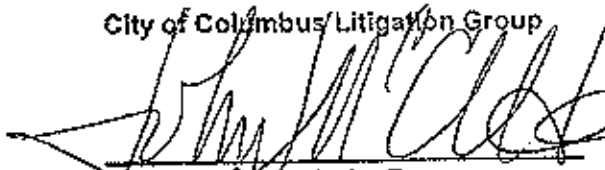
I. The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City of Columbus or its various departments, where such representation is in direct conflict with the services being rendered hereunder.

J. The LLG agrees to pay the City of Columbus any such Columbus City income tax resulting from work performed in the City of Columbus pursuant to this contract as may be required by Chapter 361, Columbus City Code.

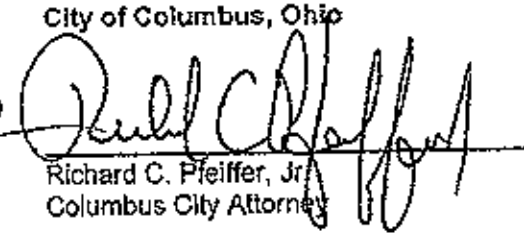
K. It is further agreed by and between the City and the LLG that this Contract and any dispute that may arise hereunder, shall be governed, controlled and interpreted using the laws of the State of Ohio and such disputes shall be brought in the Franklin County Court of Common Pleas.

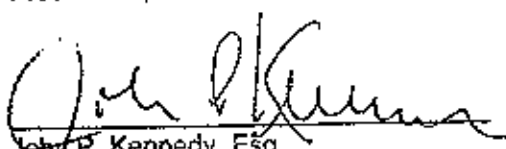
In Witness Whereof, the parties hereto hereby set their hands this 17th day of MAY, 2007.

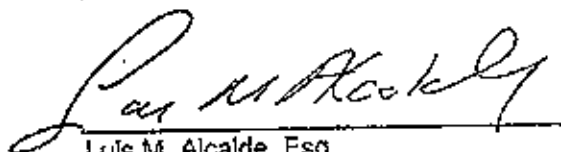
City of Columbus/Litigation Group


John J. McConnell, Jr., Esq.
Motley Rice, LLC
321 South Main Street
P.O. Box 6067
Providence, RI 02940-6067

City of Columbus, Ohio


Richard C. Pfeiffer, Jr.
Columbus City Attorney

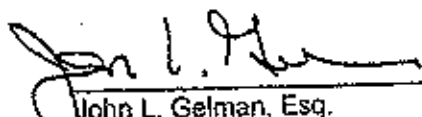

John P. Kennedy, Esq.
Crabbe, Brown & James LLP
500 S. Front Street, Ste. 1200
Columbus, Ohio 43215



Luis M. Alcalde, Esq.
Crabbe, Brown & James LLP
500 S. Front Street, Ste. 1200
Columbus, Ohio 43215

George E. Gerken, Esq.
Gerken Law Office
412 14th Street
Toledo, Ohio 43624

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan Street, Ste. 800
Toledo, Ohio 43624



John L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Square, Ste. 1600
Cleveland, Ohio 44113

2007-JUL-02 16:50 FROM-

T-805 P.002/007 F-568

CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into this 2nd day of July, 2007, by and between the City of East Cleveland ("City"), and The City of East Cleveland Lead Litigation Group, which is comprised of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

John J. McConnell, Jr., Esq.
Mortley Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Ochman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

John P. Kennedy, Esq.
George R. McCue III, Esq.
Crabbe, Brown & James
500 S. Front St., Ste. 1200
Columbus, Ohio 43215

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq. Ste. 1600
Cleveland, OH 44113

WHEREAS, the City desires to engage these attorneys and law firms, to be known as the City of East Cleveland Lead Litigation Group ("LLG"), to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., Millennium Holdings LLC (successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid

2007-JUL-02 15:59 PPDH

T-806 P.002/007 F-368

Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Youngstown (the "Claims").

WHEREAS, the LLG desires to perform said service for the City.

NOW THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

I. SCOPE OF SERVICES

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing legal representation to the City in a suit against the Lead Manufacturers.

The LLG's services will be coordinated with the City's law director, who shall retain control over the litigation, with the LLG working under the direction and discretion of the City.

The LLG hereby agrees that the City's law director retains the sole authority to authorize any settlement of any claim or complaint made or defended on behalf of the City.

2007-JUL-02 16:53 FROM-

T-905 P.004/007 F-503

The City's law director will designate an attorney from that office to monitor the case and be a liaison between the LLG, the City's law director's Office and City departments and offices. The City agrees to cooperate with LLG for the purpose of investigation and/or prosecution of the City's claim. Morley Rice LLC is designated as lead counsel on behalf of the LLG and Michael J. O'Shea, Esq. will be the liaison between the LLG and the City's law director's office.

II. TERMS

A. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this Contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by this Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City. The LLG may hire expert witnesses or other law firms, with the City's consent, to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or organization by the LLG without the prior approval of the City, nor be subject to any public records law, unless the information consists of public records under Ohio Law.

2007-JUL-02 17:00 FROM-

T-005 P.005/007 F-380

C. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of the services pursuant to this Contract shall become the City's property.

D. The City may, from time to time, request changes in the scope of services to be performed by the LLG. No such change, including an increase or decrease in the amount of compensation, which may be mutually agreed upon by the City and the LLG shall be effective or enforceable until a written amendment to this Contract has been executed by both parties and such modification has been authorized by ordinance, if required.

E. If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least fifteen (15) days after the date such notice is provided. Such notice should be provided to the LLG in writing to Michael J. O'Shea, 55 Public Square, Suite 1600, Cleveland, Ohio 44113, and notice to the City shall be provided to the City's law director, 14340 Euclid Avenue, East Cleveland, Ohio 44112.

F. The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay, a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the gross amount of money collected from the settlement. The LLG will then be reimbursed for any reasonable litigation expenses and court costs paid by the LLO on the City's behalf. All remaining funds shall go the City. In the event this matter goes to trial against any Lead Manufacturer, then the LLG shall be

2007-JUL-02 17:00 FROM-

T-205 P.008/097 P-558

entitled to a contingent fee of 33 1/3% of the gross amount of money collected and reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. If there is no settlement or verdict in favor of the City, the city shall not be responsible for payment of any costs or expenses advanced by the LLG.

G. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief or based upon reasonable time and rates incurred by the LLG.

H. The LLG agrees to follow and be bound by all provisions and terms of the Equal Opportunity Clause, which is made a part hereof, and is incorporated herein as required by the City's municipal code.

I. The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City or its various departments, where such representation is in direct conflict with the services being rendered hereunder.

J. The LLG agrees to pay the City any such city income tax resulting from work performed in the City pursuant to this contract as may be required by the City's municipal code.

K. It is further agreed by and between the City and the LLG that this Contract and any dispute that may arise hereunder, shall be governed, controlled and interpreted

2007-JUL-02 17:00 FROM-

T-806 P.007/007 F-568

using the laws of the State of Ohio and such disputes shall be brought in the Cuyahoga County Court of Common Pleas.

L. The LLC agrees to indemnify and hold harmless the City from any and all liability, damages, expenses and attorney fees that may arise or result from the services performed by the LLC in pursuit of claims against the lead pigment defendants. This obligation to indemnify and hold harmless includes but is not limited to Rule 11 sanctions for frivolous conduct ordered by any court of law.

IN WITNESS WHEREOF, the parties hereto hereby set their hands this 2 day of July, 2007.

City of East Cleveland Litigation Group

CITY OF EAST CLEVELAND

ASL
Andrew S. Lipton, Esq.

[Signature]
Mayor Eric J. Brewer

JP
John P. Kennedy, Esq.

JJM
John J. McConnell, Jr., Esq.

JLG
Jon L. Gelman, Esq.
[Signature]
Michael J. O'Shea, Esq.

CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into this 26th day of June 2007, as authorized by Lancaster City Council Resolution 86-07 and by and between the City of Lancaster ("City"), and The City of Lancaster's Lead Litigation Group, which is comprised of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

John J. McConnell, Jr., Esq.
Motley Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

John P. Kennedy, Esq.
George R. McCue III, Esq.
Crabbe, Brown & James
500 S. Front St., Ste. 1200
Columbus, Ohio 43215

Steven A. Davis, Esq.
Crabbe, Brown & James
111 S. Broad St., Ste. 209
Lancaster, OH 43130

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq. Ste. 1600
Cleveland, OH 44113

WHEREAS, the City desires to engage these attorneys and law firms, to be known as the City of Lancaster Litigation Group ("LLG"), to render certain professional

services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., Millennium Holdings LLC(successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Lancaster (the "Claims").

WHEREAS, the LLG desires to perform said service for the City.

NOW THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

I. SCOPE OF SERVICES

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing legal representation to the City in a suit against the Lead Manufacturers.

The LLG's services will be coordinated with the City Attorney, who shall retain control over the litigation, with the LLG working under the direction and discretion of the City.

The LLG hereby agrees that the City Attorney retains the sole authority to authorize any settlement of any claim or complaint made or defended on behalf of the City of Athens.

The City Director of Law will designate an attorney from his office to monitor the case and be a liaison between the LLG, the City Law Director's Office and City departments and offices. The City agrees to cooperate with LLG for the purpose of investigation and/or prosecution of the City's claim. Motley Rice LLC is designated as lead counsel on behalf of the LLG and Andrew S. Lipton of Lipton Law, LLC will be the liaison between the LLG and the City Law Director's Office.

II. TERMS

A. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this Contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by this Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City. The LLG may hire expert witnesses or other law firms, with the City's consent, to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or

organization by the LLG without the prior approval of the City, nor be subject to any public records law, unless the information consists of public records under Ohio Law.

C. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of the services pursuant to this Contract shall become the City's property.

D. The City may, from time to time, request changes in the scope of services to be performed by the LLG. No such change, including an increase or decrease in the amount of compensation, which may be mutually agreed upon by the City and the LLG shall be effective or enforceable until a written amendment to this Contract has been executed by both parties and such modification has been authorized by ordinance, if required.

E.. If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least fifteen (15) days after the date such notice is provided. Such notice should be provided to the LLG in writing to Andrew S. Lipton, Lipton Law, LLC, 316 North Michigan Avenue, Suite 800, Toledo, OH 43604, and notice to the City shall be provided to the Law Director, 123 East Chestnut Street, PO Box 1008, Lancaster, Ohio 43130.

F. The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay, a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the gross amount of money collected from the settlement. The LLG will then be reimbursed for any reasonable litigation expenses and

court costs paid by the LLG on the City's behalf. All remaining funds shall go the City. In the event this matter goes to trial against any Lead Manufacturer, then the LLG shall be entitled to a contingent fee of 33 1/3% of the gross amount of money collected and reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. If there is no settlement or verdict in favor of the City, the city shall not be responsible for payment of any costs or expenses advanced by the LLG.

G. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief or based upon reasonable time and rates incurred by the LLG.

H. The LLG agrees to follow and be bound by all provisions and terms of the Equal Opportunity Clause, which is made a part hereof, and is incorporated herein as required by the Lancaster City Code.

I. The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City of Athens or its various departments, where such representation is in direct conflict with the services being rendered hereunder.

J. The LLG agrees to pay the City of Lancaster any such Lancaster City income tax resulting from work performed in the City of Lancaster pursuant to this contract as may be required by the Lancaster City Code.

K. It is further agreed by and between the City and the LLG that this Contract and any dispute that may arise hereunder, shall be governed, controlled and interpreted using the laws of the State of Ohio and such disputes shall be brought in the Fairfield County Court of Common Pleas.

L. The LLG agrees to indemnify and hold harmless the City of Lancaster from any and all liability, damages, expenses and attorney fees that may arise or result from the services performed by the LLG in pursuit of claims against the lead pigment defendants. This obligation to indemnify and hold harmless includes but is not limited to Rule 11 sanctions for frivolous conduct ordered by any court of law.

IN WITNESS WHEREOF, the parties hereto hereby set their hands this 26th day of June, 2007.

City of Lancaster Litigation Group

CITY OF Lancaster, OHIO

Andrew S. Lipton by Terre Vandervoort
Andrew S. Lipton, Esq.

Terre Vandervoort
Terre Vandervoort
Lancaster Director of Law

John P. Kennedy by Terre Vandervoort
John P. Kennedy, Esq.

Steven A. Davis by Terre Vandervoort
Steven A. Davis, Esq.

John J. McConnell by Sam Merrill
John J. McConnell, Jr., Esq.

Jon L. Gelman by Sam Merrill
Jon L. Gelman, Esq.

Michael J. O'Shea by Sam Merrill
Michael J. O'Shea, Esq.

REVISED CONTRACT FOR PROFESSIONAL SERVICES

This revised Contract, being entered into this 25 day of June 2007, revises and replaces the prior contract between the parties which was entered into on June 26, 2006, by and between the City of Toledo ("City"), by its Law Director, John Madigan, Esq., and The City of Toledo Lead Litigation Group, which is comprised of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

George E. Gerken, Esq.
Gerken Law Office
412 14th St.
Toledo, Ohio 43624

John J. McConnell, Jr., Esq.
Motley Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq. Ste. 1600
Cleveland, OH 44113

WHEREAS, the City desires to engage a committee of lawyers known as the "City of Toledo Lead Litigation Group (LLG)" to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont de Nemours, Glidden Corp., SCM Chemicals, Sherwin-Williams Co.,

The O'Brien Corporation, American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailer and/or each of their successors, assigns and insurers relating to the presence of and effects from lead in paint in the City of Toledo (the "Claim").

WHEREAS, the LLG desires to perform said services for the City.

NOW THEREFORE,

For the reason set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

1. **SCOPE OF SERVICES:** The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract: Provide legal counsel and related legal services to the City regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include, but not be limited to the following:
 - a. Investigating the City's potential claims against lead manufacturers, et al. and providing legal representation to the City in a suit against the lead manufacturers, et al. The City's Law Director will designate an attorney from his office to monitor the case and be a liaison between the LLG and the City's Law Department and other City departments and offices. The City Attorney shall retain control over the litigation, with the LLG working under the direction and discretion of the City.
 - b. The City agrees to provide for the cooperation of all of its departments, offices, employees and agents with LLG for the purpose of the investigation and/or prosecution of the City's claim.
 - c. The LLG hereby agrees that the City Attorney retains the sole authority to authorize any settlement of any claim or complaint made or defended on behalf of the City of Toledo.

2. COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the City shall pay a contingent fee to LLG out of any settlement made in this matter prior to commencement of trial in the amount of 25% of the net amount of money collected, plus all reasonable costs and expenses incurred by the LLG on the City's behalf in this matter in furtherance of this litigation. All remaining funds shall go to the City. In the event this matter goes to trial, then the LLG shall be entitled to a contingent fee of 33 1/3% of the net amount of money collected, plus all reasonable costs and expenses incurred by the LLG on the City's behalf in this matter in furtherance of this litigation. All remaining funds shall go to the City.
- b. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the City and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for prosecution of this litigation.
- d. It is expressly understood that this the City's obligation under this agreement is subject to necessary approvals by Toledo City Council.

3. MISCELLANEOUS:

- a. It is further agreed that neither the LLG nor the City may, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in the prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

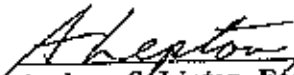
4. JURISDICTIONAL LANGUAGE:

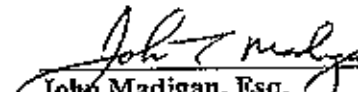
- a. It is agreed by and between the City and the LLG that this retainer agreement and any dispute that may arise hereunder, shall be governed, controlled and interpreted using the laws of the State of Ohio.

IN WITNESS WHEREOF, the City and the Lead Litigation Group have executed this Contract as of the date first herein written.


City of Toledo Litigation Group

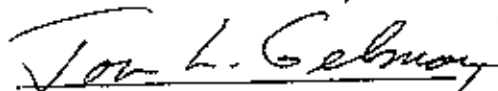
CITY OF TOLEDO, OHIO

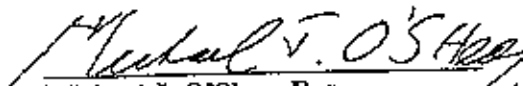

Andrew S. Lipton, Esq. *for authority email*


John Madigan, Esq.
Law Director


George E. Gerken, Esq.


John J. McConnell, Jr., Esq. *for email authority*


Jon L. Gelman, Esq. *for email authority*


Michael J. O'Shea, Esq. *for email authority*

CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into this _____ day of _____ 2007, as authorized by Youngstown City Council Resolution _____ and by and between the City of Youngstown ("City"), and The City of Youngstown Lead Litigation Group, which is comprised of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

John J. McConnell, Jr., Esq.
Motley Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

John P. Kennedy, Esq.
George R. McCue III, Esq.
Crabbe, Brown & James
500 S. Front St., Ste.1200
Columbus, Ohio 43215

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq. Ste.1600
Cleveland, OH 44113

WHEREAS, the City desires to engage these attorneys and law firms, to be known as the City of Youngstown Litigation Group ("LLG"), to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., Millennium Holdings

LLC(successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Youngstown (the "Claims").

WHEREAS, the LLG desires to perform said service for the City.

NOW THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

I. SCOPE OF SERVICES

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing legal representation to the City in a suit against the Lead Manufacturers.

The LLG's services will be coordinated with the City Attorney, who shall retain control over the litigation, with the LLG working under the direction and discretion of the City.

The LLG hereby agrees that the City Attorney retains the sole authority to authorize any settlement of any claim or complaint made or defended on behalf of the City of Athens.

The City Director of Law will designate an attorney from his office to monitor the case and be a liaison between the LLG, the City Law Director's Office and City departments and offices. The City agrees to cooperate with LLG for the purpose of investigation and/or prosecution of the City's claim. Motley Rice LLC is designated as lead counsel on behalf of the LLG and Andrew S. Lipton of Lipton Law, LLC will be the liaison between the LLG and the City Law Director's Office.

II. TERMS

A. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this Contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by this Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City. The LLG may hire expert witnesses or other law firms, with the City's consent, to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or organization by the LLG without the prior approval of the City, nor be subject to any public records law, unless the information consists of public records under Ohio Law.

C. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of the services pursuant to this Contract shall become the City's property.

D. The City may, from time to time, request changes in the scope of services to be performed by the LLG. No such change, including an increase or decrease in the amount of compensation, which may be mutually agreed upon by the City and the LLG shall be effective or enforceable until a written amendment to this Contract has been executed by both parties and such modification has been authorized by ordinance, if required.

E. If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least fifteen (15) days after the date such notice is provided. Such notice should be provided to the LLG in writing to Andrew S. Lipton, Lipton Law, LLC, 316 North Michigan Avenue, Suite 800, Toledo, OH 43604, and notice to the City shall be provided to the Law Director, 4th Floor, City Hall, 26 South Phelps Street, Youngstown, Ohio 44503.

F. The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay, a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the gross amount of money collected from the settlement. The LLG will then be reimbursed for any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. All remaining funds shall go the City. In the event this matter goes to trial against any Lead Manufacturer, then the LLG shall be

entitled to a contingent fee of 33 1/3% of the gross amount of money collected and reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. If there is no settlement or verdict in favor of the City, the city shall not be responsible for payment of any costs or expenses advanced by the LLG.

G. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief or based upon reasonable time and rates incurred by the LLG.

H. The LLG agrees to follow and be bound by all provisions and terms of the Equal Opportunity Clause, which is made a part hereof, and is incorporated herein as required by the Youngstown City Code.

I. The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City of Youngstown or its various departments, where such representation is in direct conflict with the services being rendered hereunder.

J. The LLG agrees to pay the City of Youngstown any such Youngstown City income tax resulting from work performed in the City of Youngstown pursuant to this contract as may be required by the Youngstown City Code.

K. It is further agreed by and between the City and the LLG that this Contract and any dispute that may arise hereunder, shall be governed, controlled and interpreted

using the laws of the State of Ohio and such disputes shall be brought in the Mahoning County Court of Common Pleas.

L. The LLG agrees to indemnify and hold harmless the City of Youngstown from any and all liability, damages, expenses and attorney fees that may arise or result from the services performed by the LLG in pursuit of claims against the lead pigment defendants. This obligation to indemnify and hold harmless includes but is not limited to Rule 11 sanctions for frivolous conduct ordered by any court of law.

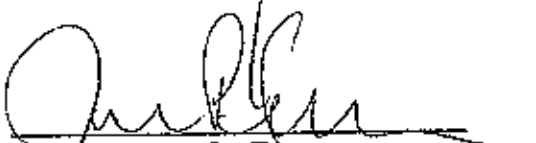
IN WITNESS WHEREOF, the parties hereto hereby set their hands this _____ day of _____, 2007.

City of Youngstown Litigation Group

CITY OF YOUNGSTOWN

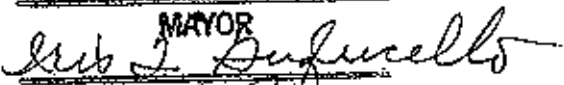


Andrew S. Lipton, Esq.

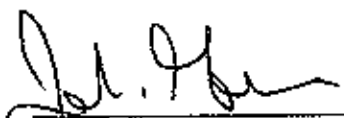

Iris Gugliucello
Youngstown Director of Law


John P. Kennedy, Esq.


APPROVED: 7/5/07
DATE
CITY OF YOUNGSTOWN
BOARD OF CONTROL:


John J. McConnell, Jr., Esq.


MAYOR

LAW DIRECTOR
FINANCE DIRECTOR



Jon L. Gelman, Esq.



Michael J. O'Shea, Esq.

Eric G. Bufacinto
DEPARTMENT OF LAW

R-S-07 75

| | |
|----------------|-------------------------------------|
| MOVED TO BOARD | <input type="checkbox"/> |
| MOVED TO SDRD | <input type="checkbox"/> |
| COMMITTEE | <input checked="" type="checkbox"/> |
| SUSPEND | <input type="checkbox"/> |

A RESOLUTION

**RATIFYING THE YOUNGSTOWN LAW DIRECTOR'S
FILING OF A NUISANCE SUIT AGAINST
LEAD PAINT MANUFACTURERS
AND APPROVING HER ENGAGEMENT OF OUTSIDE COUNSEL**

* * *

WHEREAS, The City of Youngstown has expended and continues to expend substantial funds on abatement and removal of lead paint in buildings within the City of Youngstown; and

WHEREAS, Lead Paint Companies have been found responsible for the creation of nuisances and liable for these costs by courts in other states; and

WHEREAS, There are several law suits pending in Ohio Courts brought by other municipalities against lead paint manufactures; and

WHEREAS, Challenged legislation proposed by the Ohio Senate would prohibit the filing of such suits after March 2007; and

WHEREAS, Expeditionary action was necessary to meet the filing deadline; and

WHEREAS, The City Law Director's office does not have the time expertise, staff or resources necessary to prosecute such an action on the City's behalf and a law firm with such expertise was available to represent the City under a contingent fee agreement; and

WHEREAS, The terms of the contingent fee agreement allows the City Law Director to retain control of the litigation and exercise direction and discretion over the work of outside counsel.

**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE
CITY OF YOUNGSTOWN, STATE OF OHIO:**

SECTION 1

That the Youngstown Law Director, is authorized to pursue a nuisance action against lead paint manufactures for costs incurred by the City in lead abatement and removal; that the Law Director is authorized to enter into a contingent fee agreement to retain outside counsel to represent the City in such lawsuit; and that City Council ratifies any prior action by the City Law Director in furtherance of these objectives.

SECTION 2

That the Clerk of Council is hereby instructed to forward a copy of this resolution to individuals as designated by Council.

PASSED IN COUNCIL THIS 16th DAY OF May, 2007.

Charles P. Dammarone
PRESIDENT OF COUNCIL

ATTEST:

Faith C. O'neill
CITY CLERK

APPROVED: THIS 18th DAY OF May, 2007.

Jim Bell
MAYOR

75X0011

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into by and between the City of Cincinnati, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 ("City"), and Cincinnati Lead Litigation Group, which is comprised of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

John P. Kennedy, Esq.
Crabbe, Brown & James
500 S. Front St., Ste. 1200
Columbus, Ohio 43215

John J. McConnell, Jr., Esq.
Motley Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq. Ste. 1600
Cleveland, OH 44113

WHEREAS, the City desires to engage these attorneys and law firms, to be known as the City of Cincinnati Lead Litigation Group ("LLG"), to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against any or all of the following entities: E.I. DuPont, Glidden Corp., Millennium Holdings LLC (successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid Co., N.I. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or

other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Cincinnati (the "Claims"); and

WHEREAS, the LLG has extensive knowledge, experience and expertise in the areas of law necessary to render such services; and

WHEREAS, the LLG desires to perform said services for the City; and

WHEREAS, the LLG, by reason of training, knowledge, reputation and experience, particularly in providing expert legal services concerning matters regarding environmental law and well field protection, is uniquely qualified to provide such professional, noncompetitive service to the City;

NOW THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG mutually agree as follows:

I. SCOPE OF SERVICES

The LLG agrees to perform and carry out in a manner satisfactory to the City Solicitor the following services:

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing legal representation to the City in a suit against the Lead Manufacturers, as requested by the City Solicitor. This shall include advice, assistance, administrative hearings, litigation, negotiation of any agreements or settlements or other activities as requested by the City Solicitor or her designees relating to the Claims, including the defense of any claim or complaint brought by the Lead Manufacturers as requested by the City Solicitor or her designees.

The LLG's services will be coordinated with the City Solicitor. Motley Rice LLC is designated as lead counsel on behalf of the LLG and Andrew S. Lipton, Esq. Of Lipton Law, LLC will be the liason between the LLG and the City Solicitor's Office.

The LLG hereby agrees that the City Solicitor retains the sole authority to authorize any settlement of any claim or complaint made or defended on behalf of the City of Cincinnati.

II. COMPENSATION AND METHOD OF PAYMENT

The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay, a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the gross amount of money collected from the settlement. The LLG will also be reimbursed for any reasonable litigation expenses and court costs paid by the LLG on the City's behalf out of any settlement fund created through the litigation. All remaining funds shall go to the City.

In the event this matter goes to trial against any Lead Manufacturer, then the LLG shall be entitled to a contingent fee of 33 1/3% of the gross amount of money collected plus reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the City's behalf out of any fund created through the litigation.

In no event shall the City be responsible for any litigation expenses or court costs paid by the LLG if the City does not prevail by way of settlement or trial.

In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent

with the percentage fees set out hereinabove for the monetary portion of any relief or based upon reasonable time and rates incurred by the LLG.

III. GUIDE FOR OUTSIDE LEGAL COUNSEL

The LLG acknowledges that its representation of the City shall be in accordance with the terms of the City of Cincinnati Guide for Outside Legal Counsel, attached hereto and incorporated herein by reference. Any charges billed to the City, which fall outside the permissible charges outlined in the Guidelines, will be deducted from the bill and will not be paid. To the extent there are any inconsistencies between this Agreement and the Guide for Outside Legal Counsel, the terms of this Agreement shall apply.

IV. TERM

The term of this Agreement shall commence on December 2006, and shall continue through: (1) a resolution of the Claims in a satisfactory to the City Solicitor; or (2) until this Agreement is otherwise terminated, or amended, in accordance with the terms herein.

V. EQUAL EMPLOYMENT OPPORTUNITY

This Agreement is subject to the provisions of the Equal Employment Opportunity Program of the City of Cincinnati contained in Chapter 325 of the Cincinnati Municipal Code. Section 325-9 of the Cincinnati Municipal Code is hereby incorporated by reference into this Agreement. The LLG agrees to comply with the provisions of Section 325-9.

VI. SMALL BUSINESS ENTERPRISE PROGRAM

This Agreement is subject to the provisions of the Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. Section 323-99 of the Cincinnati Municipal Code is hereby incorporated by reference into this Agreement.

Details concerning this program can be obtained from the Office of Contract Compliance, Two Centennial Plaza, 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, (513) 352-3144.

The LLG shall utilize best efforts to recruit and maximize the participation of all qualified segments of the business community in subcontracting work, including the utilization of small business enterprises, which includes small business firms owned by minorities and women. Best efforts includes the use of practices such as assuring the inclusion of qualified Small Business Enterprises in bid solicitation and dividing large contracts into smaller contracts when economically feasible.

VII. SUBCONTRACTING

None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract and shall be made expressly subject to each provision of this Agreement.

VIII. COMPLIANCE WITH LAWS AND POLICIES

In the performance of services under this Agreement, the Law Firm shall comply with all applicable statutes, ordinances, regulations and rules of the Federal Government, the State of Ohio, the County of Hamilton and the City of Cincinnati. The LLG shall also comply with the City of Cincinnati Law Department's Guide to Outside Legal Counsel. To the extent there are any inconsistencies between this Agreement and the Guide for Outside Legal Counsel, the terms of the Guide for Outside Counsel shall apply.

IX. CONFLICT OF INTEREST

The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City of Cincinnati or its

various departments, where such representation is in direct conflict with the services being rendered hereunder.

No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning and administration of the services hereunder, nor any immediate family member, close business associate, or organization which is about to employ any such person, shall have any personal financial interest, direct or indirect, in any law firms which are part of the LLG or in this Agreement and the law firms that are part of the LLG shall take appropriate steps to assure compliance.

X. REPORTS, INFORMATION AND AUDITS

The LLG, at such times and in such form as the City may require, shall furnish the City such reports as may be requested pertaining to the work or services undertaken pursuant to this Agreement, and any other matters covered by this Agreement. The LLG shall retain all financial and administrative records applicable to this Agreement and the work performed thereunder for a period of three (3) years after the expiration or termination of this Agreement, and shall permit the City or any of its representatives or auditors access to such records.

XI. TERMINATION

If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least thirty (30) days after the date such notice is provided.

XII. INDEPENDENT CONTRACTOR

The LLG shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City. The LLG shall have the exclusive right to control the details of the services and work performed hereunder and all

persons performing the same and the LLG shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be construed as creating a partnership or joint venture between the City and the LLG. No person performing any of the work or services described hereunder shall be entitled to any benefits available or granted to employees of the City.

XIII. ADDITIONAL TERMS

A. Personnel and Support Services. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this Contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by this Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City. The LLG may hire expert witnesses or other law firms, with the City's consent, to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. Confidentiality. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or organization by the LLG without the prior approval of the City, nor be subject to any public records law.

C. Ownership of Property. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of the services pursuant to this Contract shall become the City's property.

XVII. ENTIRETY

This Agreement and the Exhibits attached hereto contain the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

XVIII. SEVERABILITY


This Agreement shall be severable, if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

XIX. FORUM SELECTION

The LLG and its successors and assigns acknowledge and agree that all state courts of record sitting in Hamilton County, Ohio, shall be the exclusive forum for the filing, initiation, and prosecution of any suit or proceeding arising from or out of, or relating to, this Agreement, or any amendment or attachment thereto, including any duty owed by the LLG to the City in connection therewith.

IN WITNESS WHEREOF, the parties hereto hereby set their hands this _____ day of _____, 2007.


RECOMMENDED BY:


Rita McNeil, City Solicitor

APPROVED AS TO FORM:


Assistant City Solicitor

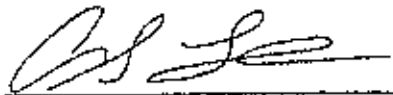
CITY OF CINCINNATI:

By: 
Its: City Manager

APPROVED BY CONTRACT
COMPLIANCE:


Contract Compliance **CERTIFICATION OF
FEB 21 2007**
9

CITY OF CINCINNATI LEAD LITIGATION GROUP:



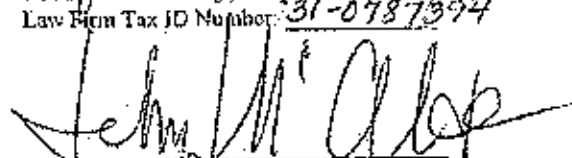
Andrew S. Lipton, Esq.
Law Firm Tax ID Number: 20-3166179

1-22-07
Date



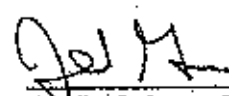
John P. Kennedy, Esq.
Law Firm Tax ID Number: 31-0787394

1-24-07
Date



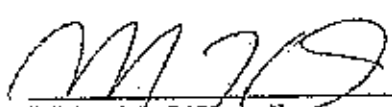
John J. McConnell, Jr., Esq.
Law Firm Tax ID Number: 75-3051232

2-5-07
Date



Jon L. Gelman, Esq.
Law Firm Tax ID Number: 22-2294684

JAN 09 2007
Date



Michael J. O'Shea, Esq.
Law Firm Tax ID Number: 34-1745676

2/9/07
Date

RETAINER AGREEMENT

This Retainer Agreement is entered into by and between the New York City Housing Authority ("NYCHA" or "Client") and The City of New York acting through the New York City Law Department ("Law Department") and the law firms of Ness, Motley, Loadholt, Richardson & Poole, P.C., Thornton & Naumes, LLP and Wilentz, Goldman & Spitzer, P.C. (hereinafter, collectively "Outside Counsel") for the purpose of setting forth the terms of engagement of Outside Counsel to represent NYCHA in the legal matters set forth below.

1. Outside Counsel agree to serve as attorneys for NYCHA in a pending civil action known as NYCHA v. Lead Industries Association, et al., Index No. 14365/89 ("the Civil Action"). The Law Department shall remain as attorney of record in the Civil Action. Unless otherwise specified herein, Outside Counsel shall have the primary responsibility to perform and provide all reasonable and necessary professional services to prepare and try the Civil Action for NYCHA. The Law Department and NYCHA shall be responsible to prosecute and defend any appeals, although Outside Counsel shall cooperate with respect to any such appeals. The Law Department agrees that it shall have the primary responsibility to respond to all fact discovery requests served upon NYCHA in the Civil Action relating to NYCHA. In order to fulfill this responsibility, the Law Department shall provide adequate legal staff, including attorneys, paralegals and secretaries and provide reasonable access to office space and use of copiers for Civil Action documents in NYCHA's or the Law Department's possession. NYCHA shall make its employees and, to the extent feasible, former NYCHA employees, reasonably available to Outside Counsel as Outside Counsel determine that their assistance, including participation as trial witnesses, is necessary for the effective prosecution of the case.

2. In consideration of the professional services to be provided by Outside Counsel, NYCHA hereby assigns to Outside Counsel as a contingency fee THIRTY PER CENT (30%) of any recovery obtained by way of verdict, judgment, settlement or otherwise from or due to the pendency of the Civil Action. However, if the Civil Action is retried and Outside Counsel do not agree to serve as attorneys for NYCHA in the retrial of the Civil Action, then the Law Department agrees to act as trial counsel in the retrial and Outside Counsel's right to a contingency fee shall be limited to quantum meruit, which in no event shall be greater than fifteen per cent (15%) of the recovery obtained in the Civil Action. NYCHA also agrees that in the event a recovery is obtained in the Civil Action, it will reimburse Outside Counsel from NYCHA's recovery for any unreimbursed litigation expenses and personal or travel and lodging expenses advanced by them.

3. As further consideration for the professional services to be undertaken by Outside Counsel, Outside Counsel shall have in their sole discretion the right to pursue against any or all of the defendants in the Civil Action or against any other lead paint or lead pigment manufacturer not a party to the Civil Action any contribution or indemnity claim available to NYCHA, arising from any verdict or judgment that NYCHA has paid as of the date of this Retainer Agreement ("Post-Verdict Claims"), in any lead poisoning claim brought against NYCHA. Within ninety (90) days after the date of this Retainer Agreement, NYCHA shall provide to Outside Counsel sufficient information about each potential contribution or indemnity Post-Verdict Claim so that Outside Counsel may determine whether to elect to pursue the claims or any number of them for NYCHA. Additionally, NYCHA, in its sole discretion, may ask Outside Counsel to pursue against any or all of the defendants in the Civil Action any contribution or indemnity claim available to NYCHA, arising from any pre-verdict settlement that NYCHA has paid as of the

date of this Retainer Agreement ("Pre-Verdict Claims"), in any lead poisoning claim brought against NYCHA. Outside Counsel shall notify NYCHA which, if any, of the potential contribution or indemnity Post or Pre-Verdict Claims they agree to pursue for NYCHA. If Outside Counsel elect to pursue one or more of such claims, NYCHA hereby assigns to Outside Counsel TWENTY FIVE PER CENT (25%) of any recovery obtained by way of verdict, judgment, settlement or otherwise from or due to the pendency of the said contribution or indemnity claim. Outside Counsel agree to use their best efforts to keep confidential the terms and amount of any settlement of any lead poisoning claim and may disclose the terms or amount of a settlement only to the extent necessary in the prosecution of the claim. Outside Counsel shall have the responsibility to handle all aspects of these matters, including preparing the case for trial and responding to discovery requests. NYCHA's Law Department shall serve as liaison between NYCHA's staff and Outside Counsel. Prior to commencing litigation, Outside Counsel shall notify NYCHA in writing of their intent to commence litigation of any Pre or Post-Verdict Claim by sending such notice to NYCHA Law Department, 250 Broadway, New York, NY 10007, Attn.: Deputy General Counsel, Tort Division. Furthermore, Outside Counsel shall not commence any such action without the consent of the Law Department and NYCHA prior to the deadline for the closing of fact discovery in the Civil Action. Outside Counsel shall have no responsibility for any contribution or indemnity claims that they do not expressly agree to pursue. NYCHA retains the right to pursue such claims if Outside Counsel decline to do so. If Outside Counsel choose to pursue any claims under this paragraph, they shall enter into a separate retainer agreement with NYCHA for each such claim.

4. All legal work performed by Outside Counsel in the Civil Action shall be pursuant to a litigation plan approved by the Law Department and NYCHA. In addition, Outside Counsel

shall keep NYCHA and the Law Department fully informed of all legal work performed in the Civil Action pursuant to this Retainer Agreement. Within thirty (30) days after the date of this Retainer Agreement, Outside Counsel shall make an oral presentation to the Law Department and NYCHA during which Outside Counsel shall make recommendations as to how the Civil Action should be tried. Within ninety (90) days after the date of this Retainer Agreement, Outside Counsel shall provide to the Law Department and NYCHA a written litigation plan that outlines the recommendations made and approved at the oral presentation. The litigation plan shall concern all substantive issues affecting the Civil Action, including, but not limited to, complaints and motions, selection of consultants and experts, discovery, pre-trial proceedings, trial, settlement negotiations, and participation of subcontractors. Regular status meetings shall be held as requested by NYCHA and the Law Department. Outside Counsel shall provide NYCHA and the Law Department with a copy of all substantive correspondence and all pleadings, discovery requests, and other documents served, transmitted, or filed in the Civil Action concerning or constituting their legal work performed pursuant to this Retainer Agreement. However, in the event the documents described in the preceding sentence are voluminous, Outside Counsel may notify NYCHA and the Law Department of the existence of the documents and provide copies at the request of NYCHA and the Law Department.

5a. Outside Counsel shall seek NYCHA's approval before incurring an item of expense in excess of five hundred dollars (\$500.00) necessary to the prosecution of the Civil Action, and NYCHA's approval of such item of expense shall not be unreasonably withheld. NYCHA shall be responsible for payment of all approved expenses and expenses not requiring approval, as set forth in the previous sentence, necessary for the prosecution of the Civil Action, regardless of the outcome of the Civil Action, up to a cap of \$315,000. All of Outside Counsel's expenses in the

prosecution of the Civil Action, not just the expenses requiring approval, shall be credited toward the cap. The parties further agree that the fees of the discovery Referee shall continue to be paid by NYCHA or the Law Department and shall not be counted against the cap. In the event that there is a retrial of the Civil Action following an appeal, if Outside Counsel elect to handle the retrial, the parties shall renegotiate the treatment of expenses for such representation, including without limitation, funding arrangements and a possible expenses cap for such retrial. To the extent that Outside Counsel advance any such expenses, they shall be reimbursed on a timely basis and no later than ninety (90) days from the date that the request for reimbursement is made. Expenses to be incurred in this case for discovery and trial preparation that NYCHA and Outside Counsel determine will benefit Outside Counsel's clients in similar lead litigation shall be divided equally among each client that benefited thereby. The Client agrees that expenses to be incurred in Outside Counsel's other Lead Litigation that the Client and Outside Counsel determine will benefit the Client may be used to offset expenses from the Civil Action that are apportioned to those other cases. Outside Counsel shall advance expenses in the actions described in ¶ 3 pursuant to the separate retainer agreements entered into for those actions. NYCHA agrees that it shall reimburse Outside Counsel in the actions set forth in ¶ 3 from its share of any recovery for any unreimbursed litigation expenses and personal or travel and lodging expenses advanced by them. Nothing in this paragraph shall prevent NYCHA from seeking to have the defendants reimburse NYCHA for its expenses reimbursed to Outside Counsel in the Civil Action or actions described in ¶ 3. Outside Counsel shall be reimbursed in accordance with the timetable set forth herein, and their right to reimbursement shall in no way be dependent on the Client's efforts or intentions to recover these expenses from the defendants.

5b. Expenses and disbursements shall be limited to costs actually incurred, without markup and sales taxes, and are further limited to:

1. Travel and Lodging: Travel by automobile at the mileage rates recognized by the Internal Revenue Service; when traveling by means other than private automobile, Outside Counsel shall use the least costly and most reasonable means of transportation (e.g., coach fare). Where lodging is required in connection with travel required by the Civil Action, NYCHA will pay Outside Counsel whichever of the following is less expensive in each billing period: (i) one hundred and ninety-eight dollars (\$198.00) per person per night for hotel lodging, or (ii) the actual cost to the Outside Counsel during that period of renting an apartment in New York City, provided that NYCHA pays only a pro rata share of the apartment rental cost when any employees or members of Outside Counsel stay overnight in the apartment for the benefit of activities other than the Civil Action described herein.

5c. 1. Outside Counsel shall submit quarterly invoices to NYCHA, with a copy to the Law Department, for reimbursement for all expenses and disbursements as allowed by this Retainer Agreement and reasonably, necessarily and actually incurred in the preceding quarter.

2. Each invoice submitted by Outside Counsel shall contain sufficient detail to allow the Client to verify the adequacy and accuracy of such invoice, including, but not limited to, the following:

- a. The name of the case; the Outside Counsel's case number; the unique identifier(s) assigned by the Client; and an identifying invoice number;
- b. The name of the employee incurring itemized expenses and disbursements; the date such expenses were incurred, and other appropriate detailed information;
- c. The tax identification number for the person or entity being paid and the total for the billing period;

- d. A statement certifying that the enclosed invoice is for the articles received, services rendered or accounts expended for NYCHA in connection with this litigation matter, that they are correct as to prices and amounts, and that, with the exception of those items specifically identified otherwise, they were incurred solely for the benefit of NYCHA.

3. Outside Counsel shall submit all bills for expenses and disbursements within ninety (90) days after their receipt but in no event later than ninety (90) days after the termination of this Retainer Agreement.

4. Internal photocopying and duplicating costs shall be at cost, but in no event to exceed 10 cents (\$0.10) per page; facsimile charges shall be at cost, but in no event to exceed one dollar (\$1.00) per transmission.

5d. Outside Counsel will maintain books, records, and documents (including electronic storage media) evidencing expenses in accordance with generally accepted accounting procedures and practices. These records shall be subject at all reasonable times to inspection, review, or audit by NYCHA personnel and other personnel duly authorized by NYCHA. Outside Counsel will retain these records, supporting documents, statistical records, and any other documents (including electronic storage media) for a period of five (5) years after termination of this Retainer Agreement, but if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings.

6. Outside Counsel agree not to settle, engage in settlement negotiations or otherwise resolve the Civil Action without the prior written consent of NYCHA and the Law Department, and NYCHA and the Law Department agree not to settle, engage in settlement negotiations or otherwise resolve the Civil Action without the knowledge and participation of Outside Counsel. Outside Counsel agree not to settle, engage in settlement negotiations or otherwise resolve any

litigation brought as described in ¶ 3 without the prior consent of NYCHA, and NYCHA agrees not to settle, engage in settlement negotiations or otherwise resolve any such matters without the knowledge and participation of Outside Counsel.

7. Outside Counsel represent that there are no lead poisoning claims against NYCHA in which they serve in any form of counsel relationship, other than Givhan v. New York City Housing Authority, a currently settled case subject to Court approval, and that, with the exception of claims settled subject to Court approval, all lead poisoning claims against New York City are set forth in Appendix A. The Law Department and Outside Counsel shall make good faith efforts to resolve fairly these Appendix A claims to the satisfaction of the parties concerned. NYCHA and the Law Department have each concluded that Outside Counsel's continuing representation of the plaintiffs in those claims does not present a conflict to Outside Counsel's representation of NYCHA in the Civil Action, and NYCHA and the Law Department agree not to challenge Outside Counsel's right to represent their clients in those claims. NYCHA and the Law Department also agree that Outside Counsel's representation of future clients in lead poisoning cases that may be adverse to NYCHA and/or the City of New York after final judgment in this case is entered, independent of any appeals, does not present a conflict to Outside Counsel's representation of NYCHA in the Civil Action, and NYCHA and the Law Department agree not to challenge Outside Counsel's right to represent such clients in the future, provided that nothing in this Retainer Agreement authorizes Outside Counsel to use any confidences or confidential information they may acquire in the Civil Action in or for any of its private plaintiffs' actions unless this information is otherwise made public as set forth below in ¶ 9.

8. No Outside Counsel attorney or paralegal involved in the representation of NYCHA shall participate in the litigation of such future claims against NYCHA or the City of New York until the conclusion of the Civil Action, independent of any appeals, as set forth above in ¶ 7. The Law Department also agrees that Outside Counsel's representation of NYCHA does not bar Outside Counsel from bringing actions against the City of New York in which lead or lead poisoning is not the subject matter, provided that nothing in this Retainer authorizes Outside Counsel to use any confidences or confidential information they may acquire in the Civil Action in any such actions, unless the information is otherwise made public as set forth below in ¶ 9.

9. Outside Counsel shall take all steps necessary to strictly ensure that any knowledge or confidences or confidential information gained in litigation on behalf of NYCHA, not made public or available to the public through the Civil Action, other lead litigation or otherwise, shall be restricted to only those attorneys, paralegals and other staff working on the Civil Action and shall not be used in the course of representations of their private plaintiffs. Except as otherwise set forth herein, no attorneys, paralegals, or other agents employed in the representation of NYCHA shall participate in any manner in the representation of Outside Counsel's private plaintiffs in lead poisoning cases against the City of New York or NYCHA until after the entry of a final judgment in the Civil Action, independent of any appeals. No attorneys, paralegals or other agents employed in the representation of private plaintiffs in lead poisoning cases against the City of New York or NYCHA shall participate in any manner in the representation of NYCHA. Outside Counsel agree that they shall not participate in any way in any lead poisoning claims against NYCHA, including assisting other counsel, until after the entry of a final judgment, independent of any appeals, in the Civil Action or any of the actions for contribution or indemnity referred to in ¶ 3. Outside Counsel agree that, with the exception of the lead

poisoning claims identified in Appendix A, they shall not participate in any way in any lead poisoning claims against the City of New York, including assisting other counsel, until after the entry of a final judgment, independent of any appeals, in the Civil Action. During these periods, Outside Counsel shall refer potential claims to counsel other than Outside Counsel.

10. The Law Department and NYCHA agree that they shall not share Outside Counsel's work product in the Civil Action with other law firms or governmental entities without the approval of Outside Counsel. Outside Counsel agree that they will abide by agreements made by the Law Department or NYCHA prior to this Retainer Agreement with other law firms or governmental entities that restrict the dissemination of, or use in non-Client litigation of, documents or work product without the approval of those other law firms or entities. Outside Counsel shall be provided the right to participate in communications concerning these prior agreements and the dissemination of or use of documents or work product.

11. In the event Outside Counsel cease to represent NYCHA during the pendency of this litigation, without waiving their other rights under New York law and this Retainer Agreement, Outside Counsel shall not assert a retaining lien.

12. The Retainer Agreement and performance of it are governed by and to be construed in accordance with the laws of the State of New York, excluding New York's rules regarding conflicts of laws. Any and all proceedings relating to the subject matter of the Retainer Agreement must be obtained in the state courts sitting in the City and County of New York, which courts have exclusive jurisdiction for such purpose. The parties hereby consent to submit themselves to the jurisdiction of such courts with respect to any proceedings arising out of, under or related to the Retainer Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement in sextuplicate, on the dates indicated, two copies to remain with the Law Department, one copy to be delivered to NYCHA and one copy each to be delivered to the three law firm signatories to this Agreement.

New York City Housing Authority
250 Broadway
New York, NY 10007

By: 

Ricardo Elias Morales

Date: 8/31/01

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street
P. O. Box 6067
Providence, RI 02903

By: 

John McConnell

Date: 10/16/01

Wilentz, Goldman & Spitzer, P.C.
90 Woodbridge Center Drive
P. O. Box 10
Woodbridge, NJ 07095

By: 

Christopher M. Placitella

Date: 9/05/01

New York City Law Department
100 Church Street
New York, NY 10007

By: 

Lorna Bade Goodman

Date:

Thornton & Naumes, LLP
100 Summer Street, 30th Floor
Boston, MA 02110

By: 

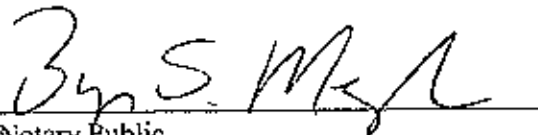
Neil T. Leifer

Date: 9/14/01

ACKNOWLEDGEMENT BY GENERAL COUNSEL

State, City and County of New York, ss.:

On this 31st day of August, 2001 before me personally came
Ricardo Elias Morales, to me known to be the General Counsel of the New York City Housing
Authority ("NYCHA"), the person described as such in and who as such executed the foregoing
instrument for the purposes therein mentioned.


Notary Public

BYRON S. MENEGAKIS
Notary Public, State of New York
No. 41-4341251
Qualified in West County
Commission Expires August 1, 192002

ACKNOWLEDGEMENT BY SENIOR ASSISTANT CORPORATION COUNSEL

State, City and County of New York, ss.:

On this 21st day of August, 2001 before me personally came Lorna Bade Goodman, to me known to be the Senior Assistant Corporation Counsel of the City of New York, the person described as such in and who as such executed the foregoing instrument as Commissioner for the purposes therein mentioned.

Bruce E. Stanton

Notary Public

BRUCE E. STANTON
Notary Public, State of New York
No. 4730108
Qualified in Nassau County
Commission Expires April 30, 2003

ACKNOWLEDGEMENT BY A PROFESSIONAL CORPORATION

State of New Jersey, County of Middlesex, City of Woodbridge, ss.:

On this 5th day of September, 2001 before me personally came Christopher M. Placitella, to me known to be an officer or principal of Wilentz, Goldman & Spitzer, P.C., the firm described in and which executed the foregoing instrument and he acknowledged to me that he subscribed the name of said firm for the purposes therein mentioned.

Therese M. Reynolds
Notary Public or Commissioner of Deeds

THERESE M. REYNOLDS
A Notary Public of New Jersey
My Commission Expires Dec. 10, 2002

ACKNOWLEDGEMENT BY A LIMITED LIABILITY PARTNERSHIP

State of Massachusetts, County of Suffolk, City of Boston, ss.:

On this 10 day of September, 2001 before me personally came Neil T. Leifer, to me known to be an officer or principal of Thornton & Naumes, LLP, the firm described in and which executed the foregoing instrument and he acknowledged to me that he subscribed the name of said firm for the purposes therein mentioned.

Lee M. Kenney
Notary Public or Commissioner of Deeds
My Commission Expires 9/30/05

ACKNOWLEDGEMENT BY A PROFESSIONAL CORPORATION

State of Rhode Island, City of Providence, County of Providence, ss.:

On this 16th day of October, 2001 before me personally came John McConnell, to me known to be an officer or principal of Ness, Motley, Loadholt, Richardson & Poole, P.C., the firm described in and which executed the foregoing instrument and he acknowledged to me that he subscribed the name of said firm for the purposes therein mentioned.


Notary Public or Commissioner of Deeds

Appendix A

1. Garcia v. City of New York, Supreme Court of the State of New York, Bronx County, Index No. 8788/94

2. Casillas v. City of New York, Supreme Court of the State of New York, Bronx County, Index No. 21307/94

Responses of John J. McConnell, Jr.
Nominee to be United States District Judge for the District of Rhode Island
to the Written Questions of Senator John Cornyn

- 1. In your questionnaire, you noted that “[p]ursuant to contractual arrangements with MRRM, P.A., which owns various assets and liabilities including attorneys’ fees arising from settled litigation, I anticipate receiving deferred compensation for work performed and completed of approximately \$2.5 million to \$3.1 million each year through 2024.”**

a. Please describe MRRM, P.A. What is its relationship to Motley Rice LLC?

Response: Response: MRRM, P.A. is a South Carolina professional association formerly known as Ness, Motley, Loadholt, Richardson & Poole, P.A. (among other names during that entity’s history). MRRM, P.A. was actively engaged in the practice of law until April 28, 2003, when my law partners and I left that firm and began the practice of law in Motley Rice LLC, a new South Carolina limited liability company. Ronald L. Motley and Joseph F. Rice have ownership control of both MRRM, P.A. and Motley Rice LLC.

i. What does MRRM, P.A. stand for?

Response: The name “MRRM, P.A.” is derived from the last names of its two shareholders, Ronald L. Motley and Joseph F. Rice, i.e., “Motley Rice Rice Motley.”

ii. What is the business address of MRRM, P.A.?

Response: MRRM, P.A.’s business address is 28 Bridgeside Blvd., Mt. Pleasant, SC 29464.

iii. What are its assets?

Response: MRRM, P.A. is not an operating entity. Its principal asset is anticipated fee income from tobacco litigation and some other small residual assets from when it was an operating entity.

iv. What is its purpose and function?

Response: MRRM, P.A. exists to own and manage various assets and liabilities. The entity has no employees and does not engage in the active practice of law.

v. Who is on its board of directors?

Response: Ronald L. Motley and Joseph F. Rice are the only directors of MRRM, P.A.

vi. Who manages the day-to-day affairs of MRRM, P.A.?

Response: Joseph F. Rice manages the minimal day-to-day affairs of MRRM, P.A.

vii. Are you currently in communication with any executives, directors, employees or agents of MRRM, P.A.? If so, please identify who, their position at MRRM, P.A. and the approximate content of the communication.

Response: Ronald L. Motley and Joseph F. Rice are my law partners at Motley Rice LLC, so I communicate regularly with them about a variety of matters. However, I am not involved in either the management or the day-to-day operations of MRRM, P.A.

2. Please describe the origin and structure of your compensation from MRRM, P.A. including the specific verdicts and/or settlements upon which this compensation is based.

Response: My compensation from MRRM, P.A. is sourced from a nominal interest in that entity's litigation costs that might be recovered in the future with respect to a variety of pending client matters in which MRRM, P.A. has a financial interest; and a deferred compensation arrangement which is funded solely by MRRM, P.A.'s future tobacco fee income arising from the state tobacco litigation settlements of the late 1990s pursuant to the Master Settlement Agreement.

a. Is this compensation contingent on any currently pending litigation? If so, please identify the case style and current procedural status.

Response: Almost all of my compensation from MRRM, P.A. is derived from settled and closed litigation, principally the tobacco Master Settlement Agreement. A very small portion of my total income from MRRM, P. A. – about \$100 in recent quarters – is derived from recovered litigation costs incurred by MRRM, P.A. prior to 2003 for the thousands of cases that were transferred to another firm and remain pending.

b. Could this compensation become dependent on any future litigation?

Response: No.

- b. Upon what else does the amount of your compensation from MRRM, P.A. depend?**

Response: The amount of my deferred compensation from MRRM, P.A. is dependent upon both the tobacco companies' financial ability to continue to pay the full amount of tobacco fees owed to MRRM, P.A. and MRRM, P.A.'s financial ability to continue to pay the full amount of deferred compensation owed to me.

- c. Is your deferred compensation held in a segregated account for your benefit, or is your future compensation dependent upon the overall financial health of MRRM, P.A.?**

Response: My deferred compensation from MRRM, P.A. is not held in a segregated account for my benefit. The amount of deferred compensation I will ultimately receive is dependent upon both the tobacco companies' financial ability to continue to pay the full amount of tobacco fees owed to MRRM, P.A. and MRRM, P.A.'s financial ability to continue to pay the full amount of deferred compensation owed to me.

- d. Could your deferred compensation become dependent upon the overall financial health of Motley Rice LLC?**

Response: No.

- e. Does MRRM, P.A. invest in any stocks, bonds, mutual funds, or other investment vehicles? If so, identify all such investments.**

Response: MRRM, P.A.'s deposit funds are invested in overnight repurchase agreements and mutual funds of U.S. Treasury securities.

- 2. Is any current or former employee of Motley Rice LLC receiving similar deferred compensation from MRRM, P.A.?**

Response: Yes.

- 3. Please provide the Committee with a copy of any agreement between you and MRRM, P.A.**

Response: Attached is the 2003 Employment and Compensation Agreement.

- 4. Please provide the Committee with any documents, communications, letters, emails or memoranda relating to your deferred compensation arrangement with MRRM, P.A.**

Response: The 2003 Employment and Compensation Agreement, which I have attached, is the only document. I have no other communications regarding it.

5. Please provide the Committee your severance agreement with Motley Rice LLC, or any other agreement that sets forth the terms of your departure from that firm.

Response: I do not have a severance agreement with Motley Rice LLC or any other agreement that sets forth the terms of my departure from that firm.

6. Did you, in any public statement or any official capacity, oppose any nominee to a federal judgeship? If so, please identify the date of such statement, its content, and the nominee that was the subject of the statement.

Response: No.

7. Did you make any monetary contributions to any political action committee or any other political organization for the purpose of opposing any nominee to a federal judgeship? If so, please identify the committee or organization, and the relevant nominee.

Response: No.

8. Please list all cases, during your tenure at Motley Rice LLC or predecessor firms, in which the firm was hired or otherwise engaged by one or more elected public officials?

Response: I undertook a diligent manual search in order to provide as complete an answer as possible, the results of which are attached as Attachment A.

9. Please list all cases responsive to question 9 in which Motley Rice LLC partners or employees, or the partners or employees of predecessor firms, donated (before or after the engagement) to the campaign of the elected public official or officials who hired or otherwise engaged the firm?

Response: My firm does not maintain a list of contributions by members or employees to elected public officials, and therefore I have no way to gather the information requested as it relates to members or employees. I have done a diligent and reasonable inquiry of the attorneys in the firm and am able to provide the following information.

My firm was retained by the State of Rhode Island by and through its then Attorney General Sheldon Whitehouse to represent the State in litigation against certain lead paint companies in 1999. According to Rhode Island Board of Elections files, I contributed \$2,000 in 1998 to Sheldon Whitehouse's 1998 campaign for Rhode Island Attorney General. In addition, although I cannot find a record of it, I do believe that Joseph F. Rice and I contributed to Governor Christine Gregoire's campaign for governor of the State of Washington.

10. On how many cases have you personally worked in which your firm was hired or otherwise engaged by one or more elected public officials?

Response: I have worked on all of the tobacco and lead paint cases listed on Attachment A.

11. Please list all cases responsive to question 11 in which you personally donated (before or after the engagement) to the campaign of the elected public official or officials who hired or otherwise engaged the firm?

Response: The Rhode Island lead-paint case and the State of Washington tobacco case.

12. At your hearing, you testified: “while I have contributed and supported and helped in campaigns, I don’t believe I’ve ever asked for anything. I don’t ask for White House tours, I don’t ask for Senate gallery seats, I just don’t ask for anything.”

- a. Have you or your firm or partners or employees of your firm ever made a political contribution to an elected public official with the hope, expectation, or understanding that the individual receiving the donation would engage you or your firm for legal services? If so, for each instance, please list the individual who received the contribution, the name of each individual who provided the contribution and their position within your firm, the amount of each contribution, and the matter for which your firm was engaged for legal services.**

Response: I have not and I am not aware that my firm, its partners or employees has.

- b. Have you or your firm or partners or employees of your firm ever made a political contribution to an elected public official after your firm was engaged by that individual on behalf of a State to represent that State in litigation? If so, for each instance, please list the individual who received the contribution, the name of each individual who provided the contribution and their position within your firm, the amount of each contribution, and the matter for which your firm was engaged for legal services.**

Response: I have not and, after having done a diligent inquiry of the attorneys and employees in the firm, I am not aware that anyone in my firm has. My firm does not maintain a list of contributions by members or employees to elected public officials.

13. Have you ever directly or indirectly suggested or encouraged employees of your firm to make political contributions? If so, please identify the candidates, campaigns, or Political Action Committees to which you suggested or encouraged donations.

Response: No.

- 14. Have you or your firm ever paid bonuses or other compensation to an employee in connection with the employee's making of certain political campaign contributions?**

Response: No.

- 15. Have you or your firm ever paid for independent political advocacy advertisements by entities not affiliated with a campaign committee? If so, provide a description of each advertisement and identify who sponsored each advertisement.**

Response: I have not and, after diligent inquiry, my understanding is that my firm has not done so.

- 16. Attached as Exhibit A is an August 2, 2000 memorandum from a Texas plaintiffs' law firm to Texas school board members lobbying the school board to join a lead-based paint remediation lawsuit that was headed by Ness Motley, predecessor to Motley Rice LLC and your firm at the time.**

- a. Do you believe that it is appropriate for a lawyer to solicit a school board as a client in a lead-based paint remediation lawsuit if the district is not aware whether district school buildings have lead-based paint and is not aware of any past remediation costs?**

Response: No.

- b. Do you believe that it is appropriate for a lawyer, in soliciting a school board as a client in a lead-based paint remediation lawsuit, to assure the district that if it recovers funds for lead-based paint remediation, those funds do not have to be spent on lead-based paint remediation, but may be placed in the general maintenance and operations fund and used for any appropriate purpose?**

Response: No.

- c. Did you or any attorneys with your firm help prepare the attached memorandum or the resolution attached thereto? If so, please identify who helped in the preparation.**

Response: I have never seen the memo that is Attachment A and know nothing about the circumstances of the preparation or distribution of this document. I made diligent inquiry of members of my firm and they advised that they also did not have any involvement with this memo.

- d. Have there been similar solicitations sent to other school board officials or other state and local government officials related to cases on which Motley Rice LLC or its predecessor firms worked? If so, to whom?**

Response: I made diligent inquiry of members of my firm and there have been no such similar solicitations.

- e. Do you agree with the memorandum's assessment that pursuing lead paint litigation on a contingency fee basis is a "win-win situation" for the school board?**

Response: No.

- 17. As part of your asbestos litigation practice, did you or your law firm ever directly or indirectly retain, work with, coordinate, communicate or collaborate with the following individuals: Dr. Ray Harron, Dr. Andrew Harron, Dr. James Ballard, Dr. Kevin Cooper, Dr. Glynn Hilbun, Dr. Todd Coulter, Dr. Barry Levy, Dr. George Martindale, and /or Dr. Allen Oaks? If so, please provide details including the matter, the relevant dates, and the nature of the retention, work, coordination, communication, or collaboration.**

Response: I did not. I have made diligent inquiry with my firm and have been advised that some of these doctors may have been involved as experts in some cases filed in Texas in which my law firm has also been involved.

- 18. As part of your asbestos litigation practice, did you or your law firm ever directly or indirectly retain, work with, coordinate, communicate or collaborate with the following asbestos screening companies known commonly as N&M, Inc., Respiratory Testing Services, Inc., and/or Healthscreen, Inc.? If so, please provide details including the matter, the relevant dates, and the nature of the retention, work, coordination, communication, or collaboration.**

Response: I did not. I have made diligent inquiry with my firm and have been advised that Healthscreen, Inc., may have been involved as experts in some cases.

ADDENDUM A
LIST OF LAWSUITS

Tobacco

Blaylock et al. v American Tobacco Co. et al,
Circuit Court, Montgomery County, No. CV-96-1508-PR

State of Alaska v. Philip Morris, Inc., et al, Superior Court, First Judicial District of Juneau, No. IJU-97915 CI (Alaska)

State of Hawaii v. Brown & Williamson Tobacco Corp., et al., Circuit Court, First Circuit, No. 97-0441-01 (Haw.)

State of Idaho v. Philip Morris, Inc., et al., Fourth Judicial District, Ada County, No. CVOC 9703239D (Idaho)

State of Iowa v. R.J. Reynolds Tobacco Company et al., Iowa District Court, Fifth Judicial District, Polk County, No. CL71048 (Iowa)

State of Kansas v. R.J. Reynolds Tobacco Company, et al., District Court of Shawnee County, Division 2, No. 96-CV-919 (Kan.)

Ieyoub v. The American Tobacco Company, et al., 14th Judicial District Court, Calcasieu Parish, No. 96-1209 (La.)

Commonwealth of Massachusetts v. Philip Morris Inc., et al., Middlesex Superior Court, No. 95-7378 (Mass.)

Kelley v. Philip Morris Incorporated, et al., Ingham County Circuit Court, 30th Judicial Circuit, No. 96-84281-CZ (Mich.)

State of Montana v. Philip Morris, Inc., et al., First Judicial Court, Lewis and Clark County, No. CDV 9700306-14 (Mont.)

State of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior Court, Chancery Division, Middlesex County, No. C-254-96 (N.J.)

State of New York et al. v. Philip Morris, Inc., et al., Supreme Court of the State of New York, County of New York, No. 400361/97 (N.Y.)

State of Ohio v. Philip Morris, Inc., et al., Court of Common Pleas, Franklin County, No. 97CVH055114 (Ohio)

State of Oklahoma, et al. v. R.J. Reynolds tobacco Company, et al., District court, Cleveland County, No. CJ-96-1499-L (Okla.)

State of Oregon v. The American Tobacco Co., et al., Circuit Court, Multnomah County, No. 9706-04457 (Or.)

Rossello, et al. v. Brown & Williamson Tobacco Corporation, et al., U. W. District Court, Puerto Rico, No. 97-1910JAF

State of Rhode Island v. American Tobacco Co., et al., Rhode Island Superior Court, Providence, No. 97-3058 (R.I.)

State of South Carolina v. Brown & Williamson Tobacco Corporation, et al., Court of Common Pleas, Fifth Judicial Circuit, Richland County, No. 97-CP-40-1686 (S.C.)

State of Utah v. R.J. Reynolds Tobacco Company, et al., U.S. District Court, Central Division, No. 96 CV 0829W (Utah)

State of Vermont v. Philip Morris, Inc., et al., Chittenden Superior Court, Chittenden County, No. 744-97 (Vt.) and 5816-98 (Vt.)

State of Washington v. American Tobacco Co. Inc., et al., Superior Court of Washington, King County, No. 96-2-1505608SEA (Wash.)

McGraw, et al. v. The American Tobacco Company, et al., Kanawha County Circuit Court, No. 94-17-7 (W. Va.)

Lead Paint

State of Rhode Island v. Lead Industries Assn. C.A. No 99-5229

In Re Lead Paint Litigation, Case Code: 702-MT, Superior Court of New Jersey

City of Cincinnati v. Sherwin-Williams et al., C.A. No. A0611226

City of Columbus v. Sherwin-Williams et al., 06CVH-16480

Ohio v. Sherwin-Williams et al., 07CVC-04-4857

City of East Cleveland v. Sherwin-Williams et al., CA No CV-06-602785

City of Athens v. Sherwin Williams, et al., C.A. No. 07CI136

City of Massillon v. Sherwin-Williams et al., C.A. No. 07 CV O1224

City of Canton v. Sherwin-Williams et al., C.A. NO. 06 CV 05048

City of Dayton, Ohio v. Sherwin-Williams, et al., C. A. No. 07 CV 12701

City of Cleveland v. Sherwin-Williams et al., C.A. No. CV-06-602785

City of Lancaster v. Sherwin-Williams et al., C.A. No. 06 CV 1055

City of Toledo v. Sherwin-Williams et al., C.A. No. G-4801-CI-200606040

City of Youngstown v. Sherwin-Williams, et al., C.A. No. 07-CV-1167

City of New York Housing Authority v. Lead Industries Assn., Index No. 14365/89, IAS Part 39

County of Santa Clara, et al. v. Atlantic Richfield Company, et al., Case No. CV 788657

Other

Kurikose v. Fed. Home Loan Mortgage Co., No. 1:08-cv-7281 (JFK) (S.D.N.Y); Motley Rice represents movant Richard H. Moore, as Treasurer of the State of North Carolina and as the Sole Trustee of the North Carolina Retirement Systems

Various individual asbestos cases on behalf of Bob Whittaker, Director, Division of Workers' Compensation Funds, Commonwealth of Kentucky Labor Cabinet

State of Oklahoma v. Tyson Foods, Inc., et al., 4:05-cv-00329-GKF-PJC, N.D. Okla.

In re: W.R. Grace & Co., et al., Case No. 01-01139 (JKF), D. Del. (Bankruptcy) - Claims No. 6937-6944 (State of Washington claims); Claims No. 6945-6947 (Port of Seattle claims); Claims No. 3405 (Fargo Housing and Redevelopment Authority claims).

NESS, MOTLEY, P.A.
EMPLOYMENT AND COMPENSATION AGREEMENT

This Employment and Compensation Agreement (the "2003 Agreement") is entered into this 30th day of January, 2003, by and among the undersigned attorneys (the "Signatories") and Ness, Motley, P.A. (f/k/a Ness, Motley, Loadholt, Richardson & Poole, Professional Association, a/k/a Ness, Motley, Loadholt, Richardson & Poole, P.A., a/k/a Ness, Motley, Loadholt, Richardson & Poole, Professional Association, d/b/a Ness, Motley, P.A.) ("Ness Motley").

WITNESSETH:

WHEREAS, on April 1, 1999, Ness Motley and certain attorneys signatory thereto (the "1999 Signatories") entered into the Ness, Motley, Loadholt, Richardson & Poole, P.A. Employment and Compensation Agreement dated March 31, 1999 and effective as of October 1, 1998 (the "1999 Agreement"), a copy of which is attached hereto as Exhibit A;

WHEREAS, Thomas D. Rogers ("Rogers") and Ness Motley entered into the Agreement and Release of June 30, 1999 between Rogers and Ness Motley (the "Rogers Agreement"), thereby making Rogers a signatory to the 1999 Agreement and thus a 1999 Signatory;

WHEREAS, Ness Motley, the 1999 Signatories (including Rogers), Charles Patrick ("Patrick"), and Michael Brickman ("Brickman") entered into the Agreement and Release of December 6, 1999 (the "Patrick/Brickman Agreement"), thereby making Patrick and Brickman signatories to the 1999 Agreement and thus 1999 Signatories;

WHEREAS, Paragraph 14(A) of the 1999 Agreement provides that the 1999 Agreement shall be in full force and effect until December 31, 2002 and its terms and provisions shall continue on after December 31, 2002 until affirmatively replaced after December 31, 2002 by another compensation agreement expressly replacing and superseding the 1999 Agreement;

WHEREAS, Paragraph 14(A) of the 1999 Agreement further provides that the replacement and supersedure of the 1999 Agreement requires the approval of persons listed on Exhibit A to the 1999 Agreement holding in the aggregate at least 60% of the total of the weighted percentages set forth on Exhibit A to the 1999 Agreement held by those persons who are members of Ness Motley at the time that the 1999 Agreement is replaced and superseded;

WHEREAS, the persons listed on Exhibit A to the 1999 Agreement who are members of Ness Motley as of the date first written above and who have the right to vote on the replacement and supersedure of the 1999 Agreement, and their respective weighted percentages applicable to determining the 60% aggregate weighted percentage necessary to approve the replacement agreement, are as follows:

| <u>Individual</u> | <u>Weighted Percentage</u> |
|-------------------|----------------------------|
| Motley | 48.04% |
| Rice | 26.52% |
| Hulsey | 9.06% |
| Ritter | 5.86% |
| McConnell, J. | 5.79% |
| Allston | 0.61% |
| Herrick | 1.07% |
| Cottingham | 0.65% |
| Boiter | 0.81% |
| Cone | 1.07% |
| McConnell, B. | 0.52% |

WHEREAS, of the persons listed on Exhibit A to the 1999 Agreement who are members of Ness Motley as of the date first written above, the affirmative vote of Ronald L. Motley and Joseph F. Rice exceeds the 60% weighted vote requirement to replace and supersede the 1999 Agreement;

WHEREAS, Paragraph 14(B) of the 1999 Agreement provides that Paragraphs 8, 9, 10, 12, 13, and 15(B)-(G) shall continue in effect indefinitely beyond the life of the 1999 Agreement

as to the lawyers identified in Paragraph 15(B) of the 1999 Agreement, regardless of other changes in any subsequent agreement;

WHEREAS, certain provisions regarding Paragraph 15 of the 1999 Agreement were later clarified, modified, and amended by the Arbitration Award dated November 19, 2001 and delivered December 11, 2001 (the "Arbitration Award"), a copy of which is attached hereto as Exhibit B; and

WHEREAS, Ness Motley and the Signatories (collectively, Ness Motley and the Signatories shall be referred to as the "Parties" and each individually as a "Party") desire to adopt this 2003 Agreement to replace and supersede the 1999 Agreement;

NOW THEREFORE, based upon the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Effective Date of 2003 Agreement. The effective date of this 2003 Agreement is January 1, 2003 (the "Effective Date"). As of the Effective Date, this 2003 Agreement supersedes and replaces in its entirety the 1999 Agreement, except as expressly provided in Paragraph 2 of this 2003 Agreement. Thus no person who is to receive compensation under this 2003 Agreement is entitled to any compensation from Ness Motley not specifically set forth or identified in this 2003 Agreement or in the Surviving 1999 Provisions (as defined hereinafter).

2. Survival of Certain Provisions of the 1999 Agreement. Paragraphs 8, 9, 10, 12, 13, and 15(B)-(G) of the 1999 Agreement (the "Operative Provisions"), as well as Paragraphs 6(B), 15(A), 15(H), 15(I), 19, 21(B), 22, 23, 24, 25, 26, 27, 28, 29 and 30 of the 1999 Agreement which are ancillary to the Operative Provisions (the "Related Provisions," and together with the Operative Provisions, the "Surviving 1999 Provisions"), shall continue in effect indefinitely and

remain unchanged as to the lawyers identified in Paragraph 15(B) of the 1999 Agreement; provided, however, that the survival of the Related Provisions shall be subject to their amendment or replacement in accordance with Paragraph 20 of this 2003 Agreement.

3. Governing Organizational Documents. It is the understanding and agreement of the Parties that the corporate organizational documents, including but not limited to the Articles of Incorporation, Articles of Amendment and By-Laws, as amended, of Ness Motley (the "Organizational Documents"), remain in full force and effect. All payments under this 2003 Agreement are for past, present and future services rendered as current and/or former employees of Ness Motley; provided, however, that the rights of the 1999 Signatories shall be deemed to have vested under the Surviving 1999 Provisions (subject to the reservation of the right to amend the Related Provisions) without the necessity of any of the 1999 Signatories providing any further services to Ness Motley.

4. Full Time Work, Best Efforts and Part-Time Law School Positions.

(A) All attorneys employed from time to time by Ness Motley (each individually known as a "Ness Motley Attorney" and collectively known as the "Ness Motley Attorneys") are expected to devote their best efforts to the business of Ness Motley and to work full time, except as set forth in Paragraph 4(B) hereof, on behalf of Ness Motley, in a competent, professional and ethical manner. All compensation received by any Ness Motley Attorney in connection with the business of Ness Motley (i.e., for the performance of work and/or professional legal services while such attorney is employed by Ness Motley) shall be considered due and owing to Ness Motley except as otherwise unanimously agreed to in writing by the members of the Board of Directors of Ness Motley (the "Board").

(B) All Parties agree and acknowledge that participation as a part-time lecturer or teaching at a law school part-time (not to exceed 15% of such lawyers' time) will be permitted and will be deemed not inconsistent with his or her duties and responsibilities under the provisions of this Paragraph 4. Any compensation earned over and above reasonable out-of-pocket expenses as such part-time lecturer or teacher shall be considered Ness Motley income, and shall be due and owing to Ness Motley.

5. Compensation under 2003 Agreement. All legal fees and other money ("Income") received by Ness Motley (e.g., including interest or investment income by Ness Motley) on or after January 1, 2003 not governed by the Surviving 1999 Provisions shall be governed solely and exclusively by this 2003 Agreement, the Organizational Documents, and the employment or compensation agreements (if any) between Ness Motley and its employees. Ness Motley's obligations to disburse Income received are unfunded and unsecured and are contractual rights against Ness Motley only, and Ness Motley's obligations to disburse Income hereunder become due and owing only after Ness Motley receives such Income. There is no present right of any Ness Motley Attorney to Income not yet received by Ness Motley, and no Ness Motley Attorney has any direct interest in, claim to, ownership interest in, or security interest, lien, or encumbrance of any kind whatsoever on, Income received by Ness Motley or in or on Ness Motley's rights to receive such Income.

6. Personal Assistants. During the term of this 2003 Agreement, in order to make Ronald L. Motley more productive to Ness Motley, Ronald L. Motley shall be provided a runner at his discretion and personal direction and at Ness Motley's expense so long as the annual cost does not exceed Twenty Five Thousand Dollars (\$25,000.00). Joseph F. Rice may use Lloyd Daniels for any uses that in his discretion make Joseph F. Rice more productive for Ness Motley.

Further, Ronald L. Motley shall be provided a business development expense account not to exceed One Hundred Thousand Dollars (\$100,000.00) annually. In order to receive the money, Ron Motley must provide documentary evidence to support the tax deductibility of this payment by Ness Motley. This sum shall be due and payable on March 31 following the year of the expenditure.

7. Deductions from General Compensation. Any payments made pursuant to the Surviving 1999 Provisions shall be deducted prior to determining general compensation under Paragraph 8 hereof.

8. General Compensation. All net Income received by Ness Motley but not otherwise expressly addressed in the Surviving 1999 Provisions or in this 2003 Agreement may be disbursed as compensation for services rendered to the employees of Ness Motley on an annual basis as and when determined by the Board.

9. Severance Rights of Signatories. There are severance formulae presently in effect for all Signatories that have an employment or compensation agreement with Ness Motley. Those existing employment or compensation agreements, and all severance payments due thereunder upon termination of employment with Ness Motley, shall remain unaltered and in effect. If a Signatory or other Ness Motley Attorney did not and does not sign an employment or compensation agreement with Ness Motley providing for severance rights, no severance rights exist or shall exist, and no such rights are created by this 2003 Agreement.

10. Term of 2003 Agreement. This 2003 Agreement shall be in full force and effect from January 1, 2003, until December 31, 2025.

11. Incentive Bonuses. The Board shall have the authority, but not the obligation, to award an incentive bonus up to a maximum of 2.5% of the net Income actually received by Ness

Motley on any identifiable project or case (except amounts subject to the Surviving 1999 Provisions) to any Ness Motley Attorney. The award may be granted before, during, or after the project or case. The purpose of the incentive bonuses is to more fairly compensate attorneys for extraordinary and superlative effort, ingenuity, creativity, and result and to motivate attorneys for the benefit of Ness Motley's clients. It is recognized that Ness Motley expects excellent quality work from all attorneys at all times; the incentive bonuses are for work over and above that level of work.

12. Composition of Committees. The composition of any committee provided for under the terms of this 2003 Agreement (including, without limitation, the removal or replacement of members thereof) shall be determined by the Board.

13. Transfer of Fee Awards. In order to enhance and protect the rights of the 1999 Signatories under the Operative Provisions, it has been proposed that (a) Ness Motley's ownership of and rights to receive payments under the tobacco fee awards (the "Fee Awards") referenced in Paragraph 15 of the 1999 Agreement be transferred to one or more single-purpose bankruptcy remote limited liability companies ("LLCs") and that such LLCs be further authorized to transfer and assign participation or other interests to other LLCs either owned by the transferring LLCs or Ness Motley or to third-party firms with an interest in such Fee Awards, and (b) Ness Motley's LLC interests may be transferred to a deferred compensation trust for the benefit of the 1999 Signatories and others and income received thereon be paid pursuant to a deferred compensation plan. To the extent necessary, if at all, the Signatories hereunder consent to the above-described transfer of the Fee Awards and the LLC interests under terms, conditions, and documents approved by the Board.

14. Agreement to Arbitrate. Any controversy, claim, dispute and/or interpretation arising out of or relating to this 2003 Agreement or the Organizational Documents (any such matter is an "Arbitration Claim"), or the breach thereof, shall be settled only by private binding nonappealable arbitration administered by the American Arbitration Association under its applicable rules. The American Arbitration Association shall be contacted in accordance with its applicable rules by anyone with an Arbitration Claim, and the American Arbitration Association shall follow its applicable rules to have an arbitrator or arbitrators appointed; provided, however, that all arbitrators must be attorneys. The arbitrator or arbitrators, upon good cause shown and consistent with the expedited nature of arbitration, shall order discovery, the conduct of depositions and the use of interrogatories in any arbitration initiated pursuant to this 2003 Agreement; however, the arbitrator or arbitrators may place such limitations on the conduct of such discovery as the arbitrator or arbitrators shall deem appropriate, in his or her or their discretion. Any arbitration initiated pursuant to this 2003 Agreement shall take place in either Charleston, South Carolina or in Mount Pleasant, South Carolina. Multiple arbitrations involving the same or substantially similar Arbitration Claims may be consolidated either by agreement of the parties to the arbitrations or by court order.

15. Governance. Ronald L. Motley and Joseph F. Rice are the Shareholders of Ness Motley (the "Shareholders"). Pursuant to the Organizational Documents, on January 30, 2003, the Shareholders have unanimously elected Ronald L. Motley and Joseph F. Rice as the sole members of the Board. Members of the Board shall serve pursuant to the Organizational Documents. There shall be no executive committee unless created by the Board separate from this 2003 Agreement.

16. Confidentiality. The Signatories affirm and recognize that certain matters regarding the operation of Ness Motley are confidential and privileged (for example, client confidences), and agree not to disclose any such matters to any third party not related to Ness Motley unless agreed to by Ness Motley or required by law. This Paragraph 16 is not meant to restrict any Signatory's practice of law or participation in any bona fide educational program whether as part of a continuing legal education program and/or a university or law school curriculum provided that client confidentiality is appropriately protected. This Paragraph 16 may be enforced in equity or the law, and it is recognized by the Signatories hereto that such breach would subject the person breaching this provision to substantial and punitive damages by Ness Motley.

17. Representations And Warranties by Signatories. Each Signatory represents and warrants that, to the Signatory's best knowledge, the execution and delivery by the Signatory of this 2003 Agreement does not, and the performance by the Signatory of the Signatory's obligations hereunder shall not, with or without the giving of notice or the passage of time, or both: (a) violate any judgment, writ, injunction, or order of any court, arbitrator, or governmental agency applicable to the Signatory, or (b) conflict with or result in the breach of any provisions of or the termination of, or constitute a default under, any agreement to which the Signatory is a party or by which the Signatory is or may be bound.

18. Binding Effect; Delegation By Signatories Of Duties Prohibited. This 2003 Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their respective successors, heirs, and legal representatives and, in the case of Ness Motley, its successors and assigns who assume Ness Motley's obligations hereunder. The terms "successors, heirs, and legal representatives" shall mean that person or persons who shall be

designated by such Signatory by an instrument in writing filed with Ness Motley, as the successor, heir and/or legal representative to such attorney. Amounts payable under this 2003 Agreement with respect to or as a result of such Signatory's death shall be paid to such designated successor, heir and/or legal representative. If no successor, heir and/or legal representative has been so designated by a Signatory, then his or her successor, heir and/or legal representative shall be his or her estate. The duties and covenants of the Signatories to this 2003 Agreement, being personal, may not be delegated.

19. Notices. All notices, consents, waivers, and other communications under this 2003 Agreement must be in writing and shall be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile (with written confirmation of receipt), provided that a copy is mailed by registered mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and facsimile numbers set forth below (or to such other addresses and facsimile numbers as a party may designate by notice to the other parties):

If to Ness Motley: 28 Bridgeside Boulevard, Mt. Pleasant, South Carolina 29464
Telephone: (843) 216-9000
Telecopy: (843) 216-9450

Attention: Ronald L. Motley
Joseph F. Rice

If to a Signatory: At the addresses set forth below their names on the signature pages of this 2003 Agreement.

20. Entire Agreement. This 2003 Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, between the Parties hereto with respect to the subject matter

hereof, except as otherwise expressly provided in this 2003 Agreement, the Organizational Documents and the employment or compensation agreements (if any) between Ness Motley and the individual Signatories. The terms and provisions of this 2003 Agreement and the Related Provisions may be amended or replaced from time to time by the written agreement of the Board and persons listed below in this Paragraph 20 who are employees of Ness Motley at the time of such amendment or replacement and who hold in the aggregate at least 60% of the total of the weighted percentages set forth below in this Paragraph 20 that are held by employees of Ness Motley at the time of such amendment or replacement:

| <u>Individual</u> | <u>Weighted Percentage</u> |
|-------------------|----------------------------|
| Motley | 48.04% |
| Rice | 26.52% |
| Hulsey | 9.06% |
| Ritter | 5.86% |
| McConnell, J. | 5.79% |
| Allston | 0.61% |
| Herrick | 1.07% |
| Cottingham | 0.65% |
| Boiter | 0.81% |
| Cone | 1.07% |
| McConnell, B. | 0.52% |

21. Jurisdiction. Any action or proceeding seeking to enforce any arbitration award rendered pursuant to this 2003 Agreement may be brought against any of the Parties in the courts of the State of South Carolina in Charleston, South Carolina, or, if the claimant has or can acquire jurisdiction, in any of the federal courts in Charleston County, South Carolina, and each of the Parties consents to the jurisdiction of and venue in such courts (and the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere in the world.

22. Paragraph Headings, Construction. The headings of Paragraphs in this 2003 Agreement are provided for convenience only and shall not affect its construction or interpretation. All references to "Paragraph" or "Paragraphs" refer to the corresponding Paragraph or Paragraphs of this 2003 Agreement unless otherwise specified. All words used in this 2003 Agreement shall be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

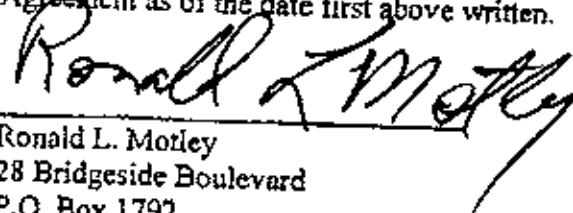
23. Severability. If any provision of this 2003 Agreement is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions, and if any provision is determined to be illegal, invalid or unenforceable in any jurisdiction or as to any person, it shall not be illegal, invalid or unenforceable in any other jurisdiction or as applied to any other person.

24. Counterparts. This 2003 Agreement may be executed in one or more counterparts (including by facsimile or telecopier), each of which shall be deemed to be an original copy of this 2003 Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement.

25. Governing Law. This 2003 Agreement and the rights and obligations of the Parties under this 2003 Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina without regard to conflicts of laws principles.

IN WITNESS WHEREOF, the Parties hereby have executed and delivered this 2003

Agreement as of the date first above written.



Ronald L. Motley

28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

John J. McConnell, Jr.
321 South Main Street, Suite 402
P.O. Box 6067
Providence, RI 02940

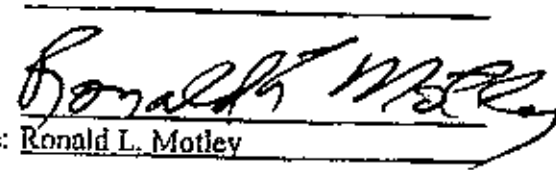
Joseph F. Rice
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

Ann Ritter
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

Paul H. Hulsey
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

NESS, MOTLEY, P.A.

By: _____
Name: Joseph F. Rice
Title: _____

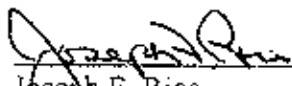
By: 
Name: Ronald L. Motley
Title: _____

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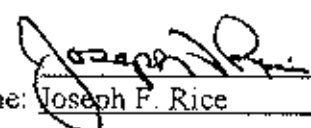
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Paul H. Huisey
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

NESS, MOTLEY, P.A.

By: _____

Name:  Joseph F. Rice

Title: _____

By: _____

Name: Ronald L. Motley

Title: _____

IN WITNESS WHEREOF, the Parties hereby have executed and delivered this 2003

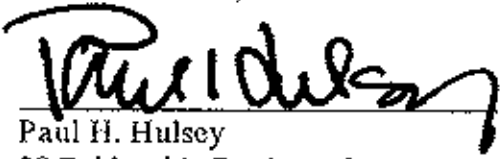
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P.O. Box 1792
Mount Pleasant, SC 29465


NESS, MOTLEY, P.A.

By: _____
Name: Joseph F. Rice
Title: _____

By: _____
Name: Ronald L. Motley
Title: _____

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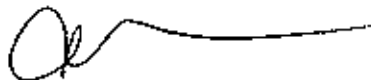
By: _____
Name: Joseph F. Rice
Title: _____

By: _____
Name: Ronald L. Motley
Title: _____

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Mount Pleasant, SC 29465

NESS, MOTLEY, P.A.

By: _____
Name: Joseph F. Rice
Title: _____

By: _____
Name: Ronald L. Motley
Title: _____

Responses of John J. McConnell, Jr.
Nominee to be United States District Judge for the District of Rhode Island
to the Written Questions of Senator Tom Coburn, M.D.

- 1. Please identify all not-for-profit organizations that you have represented in a pro bono capacity and briefly describe the matter(s) at issue.**

Response: I have represented RI Arc, formerly known as the RI Association for Retarded Citizens with various legal issues involving community residences and services for people with developmental disabilities. I have represented Trinity Repertory Company, a local regional theatre in a few business matters including return of a security deposit and notice to prior donors about an endowment issue. I have reviewed my records and these are the two not-for-profit organizations that I could determine that I had represented.

- 2. Please explain your role at the Motley Rice firm involving asbestos litigation.**

Response: Since 1986, I have been an attorney representing workers who suffered injuries caused by exposure to asbestos. I have litigated their claims in state and federal courts and been involved with filing administrative claims.

- 3. Did you or your law firm ever pursue unimpaired asbestos claims in state or federal court? If so, describe when and where you brought such claims.**

Response: Yes, if the law of the state recognized such claims, we would pursue them on behalf of our clients. My firm has represented tens of thousands of workers who suffered injuries caused by exposure to asbestos in all 50 states. My firm has never emphasized its practice in the representation of unimpaired asbestos claims.

- a. Do you or your law firm have any involvement with existing asbestos bankruptcy trusts formed under 524(g) of the federal bankruptcy code? If so, please explain in detail the nature of such involvement.**

Response: I have had no involvement.

Members of my firm have had various roles with existing asbestos bankruptcy trusts. Joseph F. Rice, a member of Motley Rice LLC, currently serves as a member of the trust advisory committee for several of the existing bankruptcy trusts, which are listed below. Motley Rice LLC, as the attorneys for its individual clients, submits and processes claims to various existing bankruptcy trusts.

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| AC&S , Inc. | Bankr. D. Del. | No. 02-12687 |
| Armstrong World Industries, Inc. | Bankr. D. Del. | No. 00-4471 |

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| Babcock & Wilcox Co. | Bankr. E.D.La. | No. 00-10992 |
| Celotex Corp. | Bankr. M.D. Fla | Nos. 90-10016-8B1, 90-10017-8B1 |
| Dresser II | Bankr. W.D. PA. | No. 03-35592 |
| Federal Mogul | Bankr. D. Del | No. 01-10578 |
| G-I Holdings | Bankr. D.N.J. | Nos. 01-30135 and 01-38790 |
| Kaiser Aluminium Corp. | Bankr. D.Del. | No.02-10429 |
| Keene | Bankr. S.D.N.Y. | No. 93B 46090,96 CV 3492 |
| Johns-Manville Corp. | S.D.N.Y., E.D.N.Y. | No.82-B11656 through 82 B 11676 |
| MH Detrick | Bankr. N.D. Ill. | No. 98 B 01004 |
| Owens Corning Corp. | Bankr. D. Del. | No. 00-03837 |
| Rock Wool | Bankr. N.D.Ala. | Nos. CV-99-J-I589-S.BK -96-08295-TBB-11 |
| Rutland Fire Clay | Bankr. D.Vt. | No. 99-11390 |
| Shook & Fletcher | Bankr. N.D. Ala | No. 02-02771-BGc-11 |
| United States Gypsum Corp. | Bankr. D. Del. | No. 01-2094 |
| W.R. Grace Co. | Bankr. D. Del | No.s 01-1139, 01-1140 |

- b. **Have you or your law firm been involved in the formation and confirmation of an asbestos bankruptcy trust under section 524(g) of the federal bankruptcy code?**

Response: I have had no involvement.

Members of my firm have had various roles with the formation and confirmation of asbestos bankruptcy trusts. Motley Rice LLC represents clients who are representative members of the Asbestos Claims Committee. The Asbestos Claims Committee is a committee appointed by the United States Trustee for the relevant District to address the issues of the various asbestos claimants as it relates to the particular debtor. Joseph F. Rice, a member of Motley Rice LLC, has been involved in the formation and confirmation of various asbestos bankruptcy trusts, which are listed below.

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| Durabla Corp. | Bankr. D. Del | No. 09-14415 |
| AC&S | Bankr. D. Del. | No. 02-12687 |
| Congoleum Corp. | Bankr. D. N.J. | No.03-51524 |
| Babcock & Wilcox | Bankr. E.D.La | No. 00-10992 |
| Combustion Engineering | Bankr. D. Del. | No. 03-10495 |
| Celotex | Bankr. M.D.Fla. | Nos. 90-10016-8B1, 90-10017-8B1 |
| Federal Mogul | Bankr. D. Del | No. 01-10578 |
| G-I Holdings | Bankr. D.N.J. | Nos. 01-30135 and 01-38790 |
| Johns-Manville Corp. | S.D.N.Y., E.D.N.Y. | No.82-B11656 through 82 B 11676 |

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| Keene | Bankr. S.D.N.Y. | No. 93B 46090,96 CV 3492 |
| MH Detrick | Bankr. N.D. Ill. | No. 98 B 01004 |
| North American Refractories Corp. | Bankr. W.D. PA. | No. 02-20198 |
| Owens Corning Corp. | Bankr. D. Del. | No. 00-03837 |
| Pittsburgh Corning Corp. | Bankr. W.D. PA | No. 00-22876 |
| Rock Wool | Bankr. N.D.Ala. | Nos. CV-99-J-I589-S.BK -96-08295-TBB-11 |
| Rutland Fire Clay | Bankr. D.Vt. | No. 99-11390 |
| Shook and Fletcher | Bankr. N.D. Ala | No. 02-02771-BGc-11 |
| United States Gypsum Corp. | Bankr. D. Del. | No. 01-2094 |
| W.R. Grace Co. | Bankr. D. Del | No.s 01-1139, 01-1140 |

- c. Do you agree that asbestos bankruptcy trusts formed under 524(g) of the federal bankruptcy code should operate in a structure and manner necessary to give reasonable assurance that the trust will value, and be able to pay, similar present and future claims in substantially the same manner?**

Response: Yes.

- d. Do you have any concerns that asbestos bankruptcy trusts formed under 524(g) of the federal bankruptcy code are specifically structured and operated to thwart attempts to obtain information regarding trust claimants who are also making claims of other 524(g) trusts or who are suing solvent defendants in the tort system?**

Response: I do not have the information necessary to have any opinion on this matter. I have had very little dealings with asbestos bankruptcy trusts, other than to cause to be filed administrative claims on behalf of some of my clients.

- e. Have you recovered any attorneys' fees as a result of the filing of a claim with any asbestos bankruptcy trust formed under 524(g) of the federal bankruptcy code?**

Response: Yes.

- f. Do you think that asbestos bankruptcy trusts formed under 524(g) of the federal bankruptcy code have adequate internal controls and safeguards to prevent fraudulent claims from being submitted?**

Response: I do not have the information necessary to have any opinion on this matter. I have had very little dealings with asbestos bankruptcy trusts, other than to cause to be filed administrative claims on behalf of some of my clients.

- g. Do you think that asbestos bankruptcy trusts formed under 524(g) of the federal bankruptcy code should have greater cooperation and transparency**

to prevent the possibility of duplicate payments made by the trusts to the same claimants?

Response: Yes.

- h. Do you think that asbestos bankruptcy trusts formed under 524(g) of the federal bankruptcy require additional oversight from the Congress?**

Response: I do not have the information necessary to have any opinion on this matter. I have had very little dealings with asbestos bankruptcy trusts, other than to cause to be filed administrative claims on behalf of my clients.

- i. Do you think that asbestos plaintiffs who bring claims in the tort system should disclose to the court and the defendants their previous or future asbestos bankruptcy trust filings?**

Response: I think every party should comply fully with their obligations of candor to the tribunal. As to whether any particular information should be disclosed, including asbestos bankruptcy trust filings, it would depend on what the particular state law and circumstances require.

- j. Did you have any involvement in efforts to oppose or support proposed federal legislation to address problems with asbestos litigation during the 108th, 109th, or 110th Congresses?**

Response: No.

- k. Should prevailing legal standards governing expert witness testimony apply to asbestos litigation pursued in state and federal courts?**

Response: Yes, the prevailing legal standard in state and federal courts applicable to expert witness testimony should also apply to experts in asbestos litigation.

- l. Should asbestos claimants show an illness before securing compensation against an asbestos defendant in the tort system?**

Response: Yes.

- m. Should asbestos claimants show substantial exposure to a product of an asbestos defendant before securing a recovery in state or federal court against that defendant?**

Response: Like any litigant, an asbestos claimant should have a good faith basis under the law for all claims made in court, which would include substantial exposure where required by law. The law on what an asbestos claimant must show varies amongst states.

4. **After the Rhode Island Supreme Court issued its ruling overturning the verdict in your lead paint litigation, did you have any discussions with any Justice of the Rhode Island Supreme Court regarding either the case generally or the decision in particular? If so, what was the date and substance of the discussion(s)?**

Response: No.

5. **According to Rhode Island Board of Elections files, you contributed \$1,000 on December 30, 1998, and \$1,000 on November 1, 1998, to Sheldon Whitehouse's 1998 campaign for Rhode Island Attorney General. Did you make any other contributions to Senator Whitehouse's 1998 campaign for Rhode Island Attorney General?**

Response: Not to my knowledge. I do not recall any other and, in answering this question, I rechecked my personal records and publically available databases.

- a. **Did Motley Rice or any attorney at Motley Rice make any contributions to Senator Whitehouse's 1998 campaign?**

Response: Rhode Island election law has prohibited contributions from corporations. Motley Rice LLC did not make any such contributions. I do not know of any attorney affiliated with Motley Rice (other than the two contributions I made) who contributed to Senator Whitehouse's Attorney General campaign.

6. **You cited Democrat presidential candidate Bill Bradley's strong pro-gun control views as one of the main reasons you supported him for president. Do you believe the Second Amendment guarantees a fundamental right to own a firearm, and that the right should be applied to the states?**

Response: I have not formed a view on whether the Second Amendment should be applied to the states and I understand that this is a pending question before the Supreme Court of the United States. If confirmed as a U.S. District Judge, my personal beliefs will have no role in my decision-making in the courtroom. I would be bound by applicable Supreme Court and First Circuit precedent with regard to the scope and reach of the Second Amendment, including *District of Columbia v. Heller*, and the upcoming decision in *McDonald v. Chicago*.

7. **In a 5-4 majority opinion, the U.S. Supreme Court recently held in *District of Columbia v. Heller*, 554 U.S. ____ (2008), that the Second Amendment of the United States Constitution "protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." As Justice Scalia's opinion in *Heller* pointed out, Sir William Blackstone, the preeminent authority on English law for the Founders, cited the right to bear arms as one of the fundamental rights of Englishmen. Do you personally believe the right to bear arms is a fundamental right?**

Response: I have not formed a view on whether the Second Amendment is a fundamental right that should be applied to the states and I understand that this is a pending question before the Supreme Court of the United States. If confirmed as a U.S. District Judge, my personal beliefs will have no role in my decision-making in the courtroom. I would be bound by applicable Supreme Court and First Circuit precedent with regard to the scope and reach of the Second Amendment, including *District of Columbia v. Heller*, and the upcoming decision in *McDonald v. Chicago*.

- a. Do you believe that explicitly guaranteed substantive rights, such as those guaranteed in the Bill of Rights, are also fundamental rights? Please explain why or why not.**

Response: I do not have an opinion on this matter, but if confirmed as a U.S. District Judge, I would be bound by applicable Supreme Court and First Circuit precedent on this issue.

- b. Is it your understanding of Supreme Court precedent that those provisions of the Bill of Rights that embody fundamental rights are deemed to apply against the States? Please explain why or why not.**

Response: Yes. See, e.g., *Duncan vs. Louisiana*, 391 U.S. 145, 148-149 (1968) (“The test for determining whether a right extended by the Fifth and Sixth Amendments with respect to federal criminal proceedings is also protected against state action by the Fourteenth Amendment has been phrased in a variety of ways in the opinions of this Court. The question has been asked whether a right is among those “‘fundamental principles of liberty and justice which lie at the base of all our civil and political institutions,’” *Powell v. Alabama*, 287 U.S. 45, 67 (1932); whether it is “‘basic in our system of jurisprudence,” *In re Oliver*, 333 U.S. 257, 273 (1948); and whether it is “‘a fundamental right, essential to a fair trial,” *Gideon v. Wainwright*, 372 U.S. 335, 343-344 (1963); *Malloy v. Hogan*, 378 U.S. 1, 6 (1964); *Pointer v. Texas*, 380 U.S. 400, 403 (1965)”).

- c. *Heller* further stated that “it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right.” Do you believe that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right? Please explain why or why not.**

Response: The U.S. Supreme court has said that the Second Amendment codified a preexisting right, and if confirmed as a U.S. District Judge I would be bound by applicable Supreme Court and First Circuit precedent on this issue.

- d. Some have criticized the Supreme Court’s decision in *Heller* saying it “discovered a constitutional right to own guns that the Court had not previously noticed in 220 years.” Do you believe that *Heller* “discovered” a**

new right, or merely applied a fair reading of the plain text of the Second Amendment?

Response: I have not studied the history to an extent that would permit me to have formed an opinion on the criticism described. As an opinion of the Supreme Court, *Heller* is the law, and if confirmed as a U.S District Judge, I would follow it.

- 8. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No.

- 9. Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. Do you believe *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. Why or why not?**

Response: The *Lopez* and *Morrison* opinions are consistent with the Supreme Court’s earlier Commerce Clause decisions because the decisions themselves so indicate and the Court affirmed this opinion in *Gonzales v. Raich*, 545 U.S. 1 (2005).

- 10. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: I do not disagree with Justice Kennedy’s analysis as the opinion of the U.S. Supreme Court, which, if confirmed as a U.S. District Judge, I would follow.

- a. Do you believe evolving standards of decency are relevant to a court’s evaluation of the text of the Constitution or Bill of Rights?**

Response: If confirmed as a U.S. District Judge, I would not look to “evolving standards of decency” except where instructed to do so by the U.S. Supreme Court or the First Circuit.

b. How would you determine what the evolving standards of decency are?

Response: If required to make such a determination, I would apply precedents from the U.S. Supreme Court and the U.S. Court of Appeals for the First Circuit.

c. Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?

Response: No. The U.S. Supreme Court has previously ruled that the death penalty is a constitutional punishment and, therefore as a U.S. District Judge, I would follow that precedent.

d. What factors do you believe would be relevant to the judge’s analysis?

Response: The only relevant factors in the analysis of this issue at the district court level are those set forth by the U.S. Supreme Court in its decisions on the issue.

11. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Not applicable.

b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: No.

c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: I would not consider foreign law when interpreting the Eighth Amendment unless required to do so by precedent from the U.S. Supreme Court or the Court of Appeals for the First Circuit.

12. In *Kennedy v. Louisiana*, the Supreme Court held that the death penalty for the crime of child rape always violates the Eighth Amendment. Writing for a five-justice majority, Justice Kennedy based his opinion partly on the fact that 37 jurisdictions – 36 states and the federal government – did not allow for capital punishment in child rape cases.

- a. **Given the heinousness of the crime, as well as the new information on the federal government’s codification of capital punishment in child rape cases under the UCMJ, do you believe *Kennedy v. Louisiana* was wrongly decided? If not, why?**

Response: I have not analyzed this opinion. Justice Kennedy’s opinion in *Kennedy* is binding precedent and I would follow it if confirmed as a U.S. District Judge.

- b. **Following the Supreme Court’s decision, President Obama announced at a press conference: “I think that the death penalty should be applied in very narrow circumstances for the most egregious of crimes. I think that the rape of a small child, 6 or 8 years old, is a heinous crime.” Do you agree with that statement?**

Response: I can agree that the rape of a child is a heinous crime. With respect to when the death penalty should be applied, I would follow binding precedent of the U.S. Supreme Court.

13. **In *Atkins v. Virginia*, the Supreme Court ruled that the imposition of the death penalty on mentally retarded defendants constituted cruel and unusual punishment. In its majority opinion, Justice Stevens stated that the “clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country’s legislatures,” and that the majority first reviewed “the judgment of legislatures that have addressed the suitability of imposing the death penalty on the mentally retarded.” The majority cited the fact that 18 States, less than half of the 38 States that permitted capital punishment, had recently enacted legislation barring execution of the mentally retarded as evidence that a “national consensus” existed about the propriety of executing the mentally retarded.**

- a. **Do you believe that the legislative acts of 47% of the country equates to a national consensus?**

Response: I do not know what constitutes a national consensus.

- b. **In its majority opinion, the Court stated: “Moreover, within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved. Brief for The European Union as *Amicus Curiae* in *McCarver v. North Carolina*, O. T. 2001, No. 00—8727, p. 4.” Do you personally believe it was appropriate for the Court to consider the opinion of the “world community” when interpreting the Eighth Amendment?**

Response: If confirmed as a U.S. District Judge, my personal beliefs will not play a role in my decision making. I would be bound by that precedent and would follow the law.